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By: CARONA, Juan

S.B. No. 229

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of air conditioning and refrigeration
contractors; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. ^{Subdivisions (7) and (9),} Sections ~~2(7)~~ and ~~(9)~~, Air Conditioning and
Refrigeration Contractor License Law (Article 8861, Vernon's Texas
Civil Statutes), are amended to read as follows:

(7) "Air conditioning and refrigeration maintenance
work" means repair work and all other work required for the
continued normal performance of an environmental air conditioning
system, commercial refrigeration system or equipment, or process
cooling or heating system. The term does not include the
installation of a total replacement of the system or the
installation or repair of boilers or pressure vessels [~~that must be~~
~~installed by licensed persons pursuant to rules and regulations~~
~~adopted by the commissioner~~] under Chapter 755, Health and Safety
Code.

(9) "Air conditioning and refrigeration contracting"
means the design, installation, construction, maintenance,
service, repair, alteration, or modification of a product or of
equipment in environmental air conditioning, commercial
refrigeration, or process cooling or heating systems. The term
includes cleaning equipment and duct materials as required for the
proper operation ¹/₂ of such a system.

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1 SECTION 2. ^{Subsection (e),} ~~Section 3(e)~~, Air Conditioning and Refrigeration
2 Contractor License Law (Article 8861, Vernon's Texas Civil
3 Statutes), is amended to read as follows:

4 (e) The commissioner shall prescribe the method and content
5 of examinations administered under this Act and shall set
6 compliance requirements for the examinations. The examinations
7 ~~[shall--be-offered-only-in-Travis-County-and]~~ shall be offered on a
8 quarterly basis at locations designated by the commissioner.

9 SECTION 3. Section 3A, Air Conditioning and Refrigeration
10 Contractor License Law (Article 8861, Vernon's Texas Civil
11 Statutes), is amended by adding Subsection (i) to read as follows:

12 (i) Section 8, Article 6252-33, Revised Statutes, does not
13 apply to the advisory board.

14 SECTION 4. Section 3B, Air Conditioning and Refrigeration
15 Contractor License Law (Article 8861, Vernon's Texas Civil
16 Statutes), is amended to read as follows:

17 Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person
18 is exempted under Section 6 of this Act, a person may not perform
19 air conditioning and refrigeration contracting without a license
20 under this Act.

21 (b) A representative of the department or a municipal
22 official may issue a citation to a person who performs air
23 conditioning and refrigeration contracting without a license issued
24 under this Act. To the extent authorized by Chapter 29, Government²/₃
25 Code, the municipal court has concurrent jurisdiction with a
26 justice court of a precinct in which the municipality is located in
27 a case arising from a citation issued under this subsection.

1 SECTION 5. The Air Conditioning and Refrigeration Contractor
2 License Law (Article 8861, Vernon's Texas Civil Statutes) is
3 amended by adding Section 3C to read as follows:

4 Sec. 3C. ENFORCEMENT OF CONTRACTS. (a) A person who
5 performs air conditioning and refrigeration contracting without
6 holding the appropriate license under this Act may not collect a
7 fee or otherwise enforce a contract for the services performed. To
8 enforce a contract for the performance of air conditioning and
9 refrigeration contracting, the person who performs the services
10 must present proof that the person holds a license under this Act
11 at the time the contract is signed and the work performed.

12 (b) The commissioner shall adopt rules relating to the
13 manner in which proof may be presented under this section.

14 SECTION 6. ^{Subsections (f) and (g)} Sections 4(f) and (g), Air Conditioning and
15 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
16 Civil Statutes), are amended to read as follows:

17 (f) The application must be made on a form prescribed by the
18 commissioner and must specify the class of license and each
19 endorsement the applicant seeks. The application must be verified
20 and must be accompanied by:

21 (1) [~~evidence-of-the-insurance-coverage-required-under~~^{3/4}
22 ~~this-Act;~~

23 [~~+2~~] a statement of the applicant's practical
24 experience; and

25 (2) [~~+3~~] the examination fee.

26 (g) The commissioner shall issue an air conditioning and
27 refrigeration contractor license to an applicant who possesses the

1 required qualifications, passes the appropriate examinations,
2 furnishes evidence of the insurance coverage required under this
3 Act, and pays the [~~examination-fee-and-the~~] original license fee
4 required by this Act. An applicant who fails an examination is
5 eligible for reexamination.

6 *Insert Floor Plan. # 1*
7 SECTION 7. Section 7, Air Conditioning and Refrigeration
8 Contractor License Law (Article 8861, Vernon's Texas Civil
9 Statutes), is amended to read as follows:

10 Sec. 7. REPORTING REQUIREMENT. (a) Each air conditioning
11 and refrigeration contractor [~~person~~] licensed under this Act shall
12 notify the municipal authority who has control of the enforcement
13 of regulations relative to air conditioning and refrigeration
14 contracting in the municipality in which the person is engaged in
15 air conditioning and refrigeration contracting that the person has
16 obtained a state license.

17 (b) The notification must be in the form required by the
18 municipality.

19 (c) The amount of a fee imposed by a municipality on a
20 contractor to provide notice under this section may be set by the
21 municipality only in the amount reasonable and necessary to
22 implement this section.

23 SECTION 8. Section 8, Air Conditioning and Refrigeration
24 Contractor License Law (Article 8861, Vernon's Texas Civil
25 Statutes), is amended to read as follows:

26 Sec. 8. PENALTY. Except as provided in Section 9, a person^{6/7}
27 commits an offense if the person knowingly or intentionally engages
in air conditioning and refrigeration contracting without a license

1 issued under this Act. An offense under this section is a Class A
2 [B] misdemeanor.

3 SECTION ^{9c}9. Section 9, Air Conditioning and Refrigeration
4 Contractor License Law (Article 8861, Vernon's Texas Civil
5 Statutes), is amended to read as follows:

6 Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a
7 municipality of this state that complies with the requirements of
8 this section is valid under the terms of the license within that
9 municipality. However, a license issued under this Act is valid
10 throughout the state, and the holder and people under supervision
11 are not required to hold a municipal license to practice air
12 conditioning and refrigeration contracting in any municipality
13 within this state.

14 (b) An applicant for a municipal license must:

15 (1) pass an examination that covers the same subjects
16 as the examination required by the commissioner for an air
17 conditioning and refrigeration contractor license of the class of
18 work that the municipal applicant proposes to perform; and

19 (2) meet experience requirements that are at least as
20 strict as those required under Section 4(e) of this Act for an air
21 conditioning and refrigeration contractor license.

22 (c) A municipality may by ordinance adopt and enforce
23 standards for air conditioning and refrigeration contractors that ⁷/₈
24 are consistent with the standards established under this Act. The
25 municipality shall report violations of the ordinance to the
26 commissioner not later than the 10th day after the date on which
27 the municipality takes action to enforce the ordinance. Conviction

1 of an offense under the municipal ordinance is a ground for the
2 denial, suspension, or revocation of a license issued under this
3 Act.

4 SECTION 10. ^{Subsection (c),} Section 23~~(c)~~, The Real Estate License Act
5 (Article 6573a, Vernon's Texas Civil Statutes), is amended by
6 adding Subdivision (4) to read as follows:

7 (4) In addition to the license requirements imposed
8 under Subdivisions (1)^{(2), and}(3) of this subsection, a business entity
9 that inspects an environmental air conditioning system, commercial
10 refrigeration system, or process cooling or heating system as part
11 of a real estate inspection conducted under this Act must employ a
12 person who holds the appropriate air conditioning and refrigeration
13 contractor licenses and endorsements under the Air Conditioning and
14 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
15 Civil Statutes). An employee who does not hold a license or
16 endorsement under the Air Conditioning and Refrigeration Contractor
17 License Law (Article 8861, Vernon's Texas Civil Statutes) may
18 perform the inspection under the direction of the license holder.
19 For purposes of this Act, "inspection" of environmental air
20 conditioning, commercial refrigeration, and process cooling and
21 heating equipment means an inspection that^{8/}includes the use of
22 electronic instruments, gauges, thermometers, mechanical
23 instruments, or other meters that require direct in-line connection
24 to the refrigerant system.

25 SECTION 11. ²Section 25, Residential Service Company Act
26 (Article 6573b, Revised Statutes), is amended to read as follows:

27 Sec. 25. EXEMPTIONS. The provisions of this Act shall not

1 apply to any of the following persons and transactions, and each
2 and all of the following persons and transactions are hereby
3 exempted from the provisions of this Act, to wit:

4 (a) performance guarantees given by either the builder
5 of a home or the manufacturer or seller of an appliance or other
6 system or component;

7 (b) any residential service contract executed on or
8 before the effective date of this Act;

9 (c) any service contract, guarantee, or warranty
10 intending to guarantee or warrant the repairs or service of a home
11 appliance, system, or component, provided such service contract,
12 guarantee, or warranty is issued by a person who has sold,
13 serviced, repaired, or provided replacement of such appliance,
14 system, or component at the time of, or prior to the issuance of
15 such contract, guarantee, or warranty; and provided further that
16 the person issuing the service contract, guarantee, or warranty
17 does not engage in the business of a service company;

18 (d) any person engaging in the business of structural
19 pest control in compliance with the Texas Structural Pest Control⁹/₁₀
20 Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes,
21 1925);

22 (e) any person who performs air conditioning and
23 refrigeration contracting in compliance with the Air Conditioning
24 and Refrigeration Contractor License Law (Article 8861, Vernon's
25 Texas Civil Statutes); and

26 (f) any service or maintenance contract or agreement,
27 or warranty, which provides for, warrants, or guarantees, the

1 maintenance, repair, service, replacement, or operation or
2 performance, of any product or part thereof, including but not
3 limited to a structural component, the appliances, or the
4 electrical, plumbing, heating, cooling or air-conditioning systems
5 in or of a building or residence, provided such service or
6 maintenance contract or agreement, or warranty is sold, offered for
7 sale, or issued by the manufacturer or merchant who manufactured or
8 sold such product or part thereof.

9 SECTION ¹³~~12~~. (a) The change in law made to Section 8, Air
10 Conditioning and Refrigeration Contractor License Law (Article
11 8861, Vernon's Texas Civil Statutes), by this Act applies only to
12 an offense committed on or after the effective date of this Act.
13 For purposes of this section, an offense is committed before the
14 effective date of this Act if any element of the offense occurs
15 before that date.

16 (b) An offense committed before the effective date of this
17 Act is governed by the law in effect when the offense was^{10/}~~11~~
18 committed, and the former law is continued in effect for that
19 purpose.

20 SECTION ¹⁴~~13~~. (a) Except as provided by Subsection (b) of
21 this section, the change in law made to Section 9, Air Conditioning
22 and Refrigeration Contractor License Law (Article 8861, Vernon's
23 Texas Civil Statutes), by this Act applies to a municipal license
24 that is issued or renewed on or after the effective date of this
25 Act. A municipality subject to that section shall adopt
26 examination requirements in compliance with that section not later
27 than January 1, 1998.

1 (b) To continue to engage in the practice of air
2 conditioning and refrigeration contracting after September 1, 1997,
3 a person who holds a municipal license on the effective date of
4 this Act must satisfy the examination requirements imposed under
5 *Subsection (d),* Section 9~~(b)~~, Air Conditioning and Refrigeration Contractor License
6 Law (Article 8861, Vernon's Texas Civil Statutes), as amended by
7 this Act, not later than June 1, 1998.

8 SECTION ⁵14. (a) This Act takes effect September 1, 1997.

9 (b) Not later than December 31, 1997, the commissioner of
10 licensing and regulation shall adopt rules as required by Section
11 3C, Air Conditioning and Refrigeration Contractor License Law
12 (Article 8861, Vernon's Texas Civil Statutes), as added by this
13 Act.

14 (c) *Subsection (c),* Section 23~~(e)~~, The Real Estate License Act (Article
15 6573a, Vernon's Texas Civil Statutes), as amended by this ¹¹/₁₂ Act,
16 applies only to a real estate inspection that is conducted on or
17 after the effective date of this Act. A real estate inspection
18 conducted before that date is governed by the law in effect on the
19 date that the inspection occurs, and the former law is continued in
20 effect for that purpose.

21 (d) Section 25, Residential Service Company Act (Article
22 6573b, Revised Statutes), as amended by this Act, applies only to a
23 residential service contract that is entered into on or after the
24 effective date of this Act. A residential service contract that is
25 entered into before that date is governed by the law in effect on
26 the date that the contract is entered into, and the former law is
27 continued in effect for that purpose.

1 SECTION ¹¹⁶~~15~~. The importance of this legislation and the
2 crowded condition of the calendars in both houses create an
3 emergency and an imperative public necessity that the
4 constitutional rule requiring bills to be read on three several
5 days in each house be suspended, and this rule is hereby suspended.

1-1 By: Carona, Truan S.B. No. 229
1-2 (In the Senate - Filed January 16, 1997; January 21, 1997,
1-3 read first time and referred to Committee on International
1-4 Relations, Trade, and Technology; February 6, 1997, reported
1-5 favorably by the following vote: Yeas 7, Nays 0; February 6, 1997,
1-6 sent to printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the regulation of air conditioning and refrigeration
1-10 contractors; providing penalties.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subdivisions (7) and (9), Section 2, Air
1-13 Conditioning and Refrigeration Contractor License Law (Article
1-14 8861, Vernon's Texas Civil Statutes), are amended to read as
1-15 follows:

1-16 (7) "Air conditioning and refrigeration maintenance
1-17 work" means repair work and all other work required for the
1-18 continued normal performance of an environmental air conditioning
1-19 system, commercial refrigeration system or equipment, or process
1-20 cooling or heating system. The term does not include the
1-21 installation of a total replacement of the system or the
1-22 installation or repair of boilers or pressure vessels [~~that-must-be~~
1-23 ~~installed-by-licensed-persons-pursuant-to-rules-and-regulations~~
1-24 ~~adopted-by-the-commissioner~~] under Chapter 755, Health and Safety
1-25 Code.

1-26 (9) "Air conditioning and refrigeration contracting"
1-27 means the design, installation, construction, maintenance, service,
1-28 repair, alteration, or modification of a product or of equipment in
1-29 environmental air conditioning, commercial refrigeration, or
1-30 process cooling or heating systems. The term includes cleaning
1-31 equipment and duct materials as required for the proper operation
1-32 of such a system.

1-33 SECTION 2. Subsection (e), Section 3, Air Conditioning and
1-34 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
1-35 Civil Statutes), is amended to read as follows:

1-36 (e) The commissioner shall prescribe the method and content
1-37 of examinations administered under this Act and shall set
1-38 compliance requirements for the examinations. The examinations
1-39 [~~shall-be-offered-only-in-Travis-County-and~~] shall be offered on a
1-40 quarterly basis at locations designated by the commissioner.

1-41 SECTION 3. Section 3A, Air Conditioning and Refrigeration
1-42 Contractor License Law (Article 8861, Vernon's Texas Civil
1-43 Statutes), is amended by adding Subsection (i) to read as follows:

1-44 (i) Section 8, Article 6252-33, Revised Statutes, does not
1-45 apply to the advisory board.

1-46 SECTION 4. Section 3B, Air Conditioning and Refrigeration
1-47 Contractor License Law (Article 8861, Vernon's Texas Civil
1-48 Statutes), is amended to read as follows:

1-49 Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person
1-50 is exempted under Section 6 of this Act, a person may not perform
1-51 air conditioning and refrigeration contracting without a license
1-52 under this Act.

1-53 (b) A representative of the department or a municipal
1-54 official may issue a citation to a person who performs air
1-55 conditioning and refrigeration contracting without a license issued
1-56 under this Act. To the extent authorized by Chapter 29, Government
1-57 Code, the municipal court has concurrent jurisdiction with a
1-58 justice court of a precinct in which the municipality is located in
1-59 a case arising from a citation issued under this subsection.

1-60 SECTION 5. The Air Conditioning and Refrigeration Contractor
1-61 License Law (Article 8861, Vernon's Texas Civil Statutes) is
1-62 amended by adding Section 3C to read as follows:

1-63 Sec. 3C. ENFORCEMENT OF CONTRACTS. (a) A person who
1-64 performs air conditioning and refrigeration contracting without

holding the appropriate license under this Act may not collect a fee or otherwise enforce a contract for the services performed. To enforce a contract for the performance of air conditioning and refrigeration contracting, the person who performs the services must present proof that the person holds a license under this Act at the time the contract is signed and the work performed.

(b) The commissioner shall adopt rules relating to the manner in which proof may be presented under this section.

SECTION 6. Subsections (f) and (g), Section 4, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(f) The application must be made on a form prescribed by the commissioner and must specify the class of license and each endorsement the applicant seeks. The application must be verified and must be accompanied by:

(1) ~~[evidence-of-the-insurance-coverage-required-under this-Act;~~

[+2+] a statement of the applicant's practical experience; and

(2) [+3+] the examination fee.

(g) The commissioner shall issue an air conditioning and refrigeration contractor license to an applicant who possesses the required qualifications, passes the appropriate examinations, furnishes evidence of the insurance coverage required under this Act, and pays the ~~[examination-fee-and-the]~~ original license fee required by this Act. An applicant who fails an examination is eligible for reexamination.

SECTION 7. Section 7, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. REPORTING REQUIREMENT. (a) Each air conditioning and refrigeration contractor ~~[person]~~ licensed under this Act shall notify the municipal authority who has control of the enforcement of regulations relative to air conditioning and refrigeration contracting in the municipality in which the person is engaged in air conditioning and refrigeration contracting that the person has obtained a state license.

(b) The notification must be in the form required by the municipality.

(c) The amount of a fee imposed by a municipality on a contractor to provide notice under this section may be set by the municipality only in the amount reasonable and necessary to implement this section.

SECTION 8. Section 8, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. PENALTY. Except as provided in Section 9, a person commits an offense if the person knowingly or intentionally engages in air conditioning and refrigeration contracting without a license issued under this Act. An offense under this section is a Class A [B] misdemeanor.

SECTION 9. Section 9, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a municipality of this state that complies with the requirements of this section is valid under the terms of the license within that municipality. However, a license issued under this Act is valid throughout the state, and the holder and people under supervision are not required to hold a municipal license to practice air conditioning and refrigeration contracting in any municipality within this state.

(b) An applicant for a municipal license must:

(1) pass an examination that covers the same subjects as the examination required by the commissioner for an air conditioning and refrigeration contractor license of the class of work that the municipal applicant proposes to perform; and

(2) meet experience requirements that are at least as

3-1 strict as those required under Section 4(e) of this Act for an air
 3-2 conditioning and refrigeration contractor license.

3-3 (c) A municipality may by ordinance adopt and enforce
 3-4 standards for air conditioning and refrigeration contractors that
 3-5 are consistent with the standards established under this Act. The
 3-6 municipality shall report violations of the ordinance to the
 3-7 commissioner not later than the 10th day after the date on which
 3-8 the municipality takes action to enforce the ordinance. Conviction
 3-9 of an offense under the municipal ordinance is a ground for the
 3-10 denial, suspension, or revocation of a license issued under this
 3-11 Act.

3-12 SECTION 10. Subsection (c), Section 23, The Real Estate
 3-13 License Act (Article 6573a, Vernon's Texas Civil Statutes), is
 3-14 amended by adding Subdivision (4) to read as follows:

3-15 (4) In addition to the license requirements imposed
 3-16 under Subdivisions (1), (2), and (3) of this subsection, a business
 3-17 entity that inspects an environmental air conditioning system,
 3-18 commercial refrigeration system, or process cooling or heating
 3-19 system as part of a real estate inspection conducted under this Act
 3-20 must employ a person who holds the appropriate air conditioning and
 3-21 refrigeration contractor licenses and endorsements under the Air
 3-22 Conditioning and Refrigeration Contractor License Law (Article
 3-23 8861, Vernon's Texas Civil Statutes). An employee who does not
 3-24 hold a license or endorsement under the Air Conditioning and
 3-25 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
 3-26 Civil Statutes) may perform the inspection under the direction of
 3-27 the license holder. For purposes of this Act, "inspection" of
 3-28 environmental air conditioning, commercial refrigeration, and
 3-29 process cooling and heating equipment means an inspection that
 3-30 includes the use of electronic instruments, gauges, thermometers,
 3-31 mechanical instruments, or other meters that require direct in-line
 3-32 connection to the refrigerant system.

3-33 SECTION 11. Section 25, Residential Service Company Act
 3-34 (Article 6573b, Revised Statutes), is amended to read as follows:

3-35 Sec. 25. EXEMPTIONS. The provisions of this Act shall not
 3-36 apply to any of the following persons and transactions, and each
 3-37 and all of the following persons and transactions are hereby
 3-38 exempted from the provisions of this Act, to wit:

3-39 (a) performance guarantees given by either the builder
 3-40 of a home or the manufacturer or seller of an appliance or other
 3-41 system or component;

3-42 (b) any residential service contract executed on or
 3-43 before the effective date of this Act;

3-44 (c) any service contract, guarantee, or warranty
 3-45 intending to guarantee or warrant the repairs or service of a home
 3-46 appliance, system, or component, provided such service contract,
 3-47 guarantee, or warranty is issued by a person who has sold,
 3-48 serviced, repaired, or provided replacement of such appliance,
 3-49 system, or component at the time of, or prior to the issuance of
 3-50 such contract, guarantee, or warranty; and provided further that
 3-51 the person issuing the service contract, guarantee, or warranty
 3-52 does not engage in the business of a service company;

3-53 (d) any person engaging in the business of structural
 3-54 pest control in compliance with the Texas Structural Pest Control
 3-55 Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes,
 3-56 1925);

3-57 (e) any person who performs air conditioning and
 3-58 refrigeration contracting in compliance with the Air Conditioning
 3-59 and Refrigeration Contractor License Law (Article 8861, Vernon's
 3-60 Texas Civil Statutes); and

3-61 (f) any service or maintenance contract or agreement,
 3-62 or warranty, which provides for, warrants, or guarantees, the
 3-63 maintenance, repair, service, replacement, or operation or
 3-64 performance, of any product or part thereof, including but not
 3-65 limited to a structural component, the appliances, or the
 3-66 electrical, plumbing, heating, cooling or air-conditioning systems
 3-67 in or of a building or residence, provided such service or
 3-68 maintenance contract or agreement, or warranty is sold, offered for
 3-69 sale, or issued by the manufacturer or merchant who manufactured or

4-1 sold such product or part thereof.

4-2 SECTION 12. (a) The change in law made to Section 8, Air
4-3 Conditioning and Refrigeration Contractor License Law (Article
4-4 8861, Vernon's Texas Civil Statutes), by this Act applies only to
4-5 an offense committed on or after the effective date of this Act.
4-6 For purposes of this section, an offense is committed before the
4-7 effective date of this Act if any element of the offense occurs
4-8 before that date.

4-9 (b) An offense committed before the effective date of this
4-10 Act is governed by the law in effect when the offense was
4-11 committed, and the former law is continued in effect for that
4-12 purpose.

4-13 SECTION 13. (a) Except as provided by Subsection (b) of
4-14 this section, the change in law made to Section 9, Air Conditioning
4-15 and Refrigeration Contractor License Law (Article 8861, Vernon's
4-16 Texas Civil Statutes), by this Act applies to a municipal license
4-17 that is issued or renewed on or after the effective date of this
4-18 Act. A municipality subject to that section shall adopt
4-19 examination requirements in compliance with that section not later
4-20 than January 1, 1998.

4-21 (b) To continue to engage in the practice of air
4-22 conditioning and refrigeration contracting after September 1, 1997,
4-23 a person who holds a municipal license on the effective date of
4-24 this Act must satisfy the examination requirements imposed under
4-25 Subsection (b), Section 9, Air Conditioning and Refrigeration
4-26 Contractor License Law (Article 8861, Vernon's Texas Civil
4-27 Statutes), as amended by this Act, not later than June 1, 1998.

4-28 SECTION 14. (a) This Act takes effect September 1, 1997.

4-29 (b) Not later than December 31, 1997, the commissioner of
4-30 licensing and regulation shall adopt rules as required by Section
4-31 3C, Air Conditioning and Refrigeration Contractor License Law
4-32 (Article 8861, Vernon's Texas Civil Statutes), as added by this
4-33 Act.

4-34 (c) Subsection (c), Section 23, The Real Estate License Act
4-35 (Article 6573a, Vernon's Texas Civil Statutes), as amended by this
4-36 Act, applies only to a real estate inspection that is conducted on
4-37 or after the effective date of this Act. A real estate inspection
4-38 conducted before that date is governed by the law in effect on the
4-39 date that the inspection occurs, and the former law is continued in
4-40 effect for that purpose.

4-41 (d) Section 25, Residential Service Company Act (Article
4-42 6573b, Revised Statutes), as amended by this Act, applies only to a
4-43 residential service contract that is entered into on or after the
4-44 effective date of this Act. A residential service contract that is
4-45 entered into before that date is governed by the law in effect on
4-46 the date that the contract is entered into, and the former law is
4-47 continued in effect for that purpose.

4-48 SECTION 15. The importance of this legislation and the
4-49 crowded condition of the calendars in both houses create an
4-50 emergency and an imperative public necessity that the
4-51 constitutional rule requiring bills to be read on three several
4-52 days in each house be suspended, and this rule is hereby suspended.

4-53 * * * * *

**FAVORABLE
SENATE COMMITTEE REPORT ON**

(SB) SCR SJR SR HB HCR HJR 229
By Carona Truan
(Author/Senate Sponsor)
2-6-97
(date)

**INTERNATIONAL RELATIONS,
TRADE, AND TECHNOLOGY**

We, your Committee on _____, to which was referred the attached measure,
have on February 5, 1997, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

☒ do pass and be printed

☐ do pass and be ordered not printed

☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☐ yes ☐ no

An actuarial analysis was requested. ☐ yes ☐ no

Considered by subcommittee. ☐ yes ☐ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Truan, Chairman	✓			
Senator Carona, Vice-Chair	✓			
Senator Armbrister	✓			
Senator Bivins			✓	
Senator Lindsay	✓			
Senator Ogden	✓		✓	
Senator Ratliff			✓	
Senator Shapleigh	✓			
Senator Sibley	✓			
TOTAL VOTES	7	0	2	0

COMMITTEE ACTION

(S260) Considered in public hearing

(S270) Testimony taken

Carl D. Buc
COMMITTEE CLERK

[Signature]
CHAIRMAN (Acting)

Paper clip the original and one copy of this signed form to the original bill
Retain one copy of this form for Committee files

WITNESS LIST

**SENATE INTERNATIONAL RELATIONS, TRADE AND TECHNOLOGY
COMMITTEE,
February 5, 1997-1:00P**

SB 229

FOR: Flores, Abelardo (TX A/C Contractor Assoc), Corpus Christi
Romberg, Tom (Tx A/C Contractor Assoc), Austin
ON: Denson, Pauline (TX Dept. Lic. & Reg'n), Austin

BILL ANALYSIS

Senate Research Center

S.B. 229
By: Carona
International Relations, Trade, & Technology
1-27-97
As Filed

DIGEST

The Air Conditioning and Refrigeration Contractor License Law (Article 8861, V.T.C.S.) requires those persons engaging in environmental air conditioning, commercial refrigeration, or process heating or cooling to be examined and licensed by the State of Texas. S.B. 229 sets forth regulations and penalties pertaining to air conditioning and refrigeration contracting that are related to the need for establishing certain license practices and enforcing contracts.

PURPOSE

As proposed, S.B. 229 sets forth regulations and penalties pertaining to air conditioning and refrigeration contracting.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Commissioner of Licensing and Regulation in SECTION 5 (Sec. 3c, Article 8861, V.T.C.S.).

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 2(7) and (9), Article 8861, V.T.C.S., (Air Conditioning and Refrigeration Contractor License Law) to redefine "air conditioning and refrigeration maintenance work" and "air conditioning and refrigeration contracting."

SECTION 2. Amends Section 3(e), Article 8861, V.T.C.S., to requires the examinations to be offered on a quarterly basis at locations designated by the Texas Commissioner of Licensing and Regulation (commissioner).

SECTION 3. Amends Section 3A, Article 8861, V.T.C.S., by adding Subsection (i), to provide that Section 8, Article 6252-33, V.T.C.S., does not apply to the Air Conditioning and Refrigeration Contractors Advisory Board (advisory board).

SECTION 4. Amends Section 3B, Article 8861, V.T.C.S., as follows:

Sec. 3B. New heading: LICENSE REQUIRED; CITATION. Authorizes a representative of the Department of Licensing and Regulation (department) or a municipal official to issue a citation to a person who performs air conditioning and refrigeration contracting without a license issued under this Act. Provides that the municipal court has concurrent jurisdiction with a justice court of a precinct in which the municipality is located in a case arising from a citation issued under this subsection to the extent authorized by Chapter 29, Government Code. Makes a conforming change.

SECTION 5. Amends Article 8861, V.T.C.S., by adding Section 3C, as follows:

Sec. 3C. ENFORCEMENT OF CONTRACTS. Prohibits a person who performs air conditioning and refrigeration contracting without holding the appropriate license from collecting a fee or otherwise enforcing a contract for the services performed. Requires a person to present proof that the person holds license at the time the contract is signed and the work performed in order to enforce a contract. Requires the commissioner to adopt rules

relating to the manner in which proof may be presented under this section.

SECTION 6. Amends Section 4(f) and (g), Article 8861, V.T.C.S., to delete text requiring an application to be accompanied by evidence of the insurance coverage required under this Act. Requires the commissioner to issue an air conditioning and refrigeration contractor licence to a person who furnishes evidence of the insurance coverage and performs certain activities required under this Act. Makes conforming and nonsubstantive changes.

SECTION 7. REPORTING REQUIREMENT. Amends Section 7, Article 8861, V.T.C.S., to require each air conditioning and refrigeration contractor, rather than person, to notify the corresponding municipal authority that the person has obtained a state license. Authorizes the amount of a fee imposed on a contractor to be set by the municipality only in the amount reasonable and necessary to implement this section. Makes conforming changes.

SECTION 8. Amends Section 8, Article 8861, V.T.C.S., to provide that a person commits a Class A, rather than Class B, misdemeanor if the person knowingly and intentionally engages in air conditioning and refrigeration contracting without a license.

SECTION 9. Amends Section 9, Article 8861, V.T.C.S., to provide that a license issued by a municipality of this state that complies with the requirements of this section is valid under the terms of the license within that municipality. Requires an applicant for a municipal license to pass an examination and meet specific experience requirements. Makes a conforming change.

SECTION 10. Amends Section 23(c), Article 6573a, V.T.C.S., (The Real Estate License Act) by adding Subdivision (4), to require a business entity that inspects certain systems as part of a real estate inspection to employ a person who holds the appropriate air conditioning and refrigeration contractor licenses and endorsements under Article 8861, V.T.C.S. Authorizes an employee who does not hold a license or endorsement to perform the inspection under the direction of the license holder. Defines "inspection."

SECTION 11. Amends Section 25, Article 6573b, V.T.C.S., (Residential Service Company Act) to provide that any person who performs air conditioning refrigeration in compliance with the Air Conditioning and Refrigeration Contractor License Law, Article 8861, V.T.C.S., is exempt from the provisions of this Act. Makes a conforming change.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Provides that the change in law made to SECTION 9, Article 8861, V.T.C.S., except as provided by Subsection (b), prospective. Requires a municipality to adopt examination requirements in compliance with this section not later than January 1, 1998. Requires a person who holds a municipal license to satisfy the examination requirements imposed under Section 9(b), Article 8861, V.T.C.S., not later than June 1, 1998.

SECTION 14. (a) Effective date: September 1, 1997.

(b) Requires the commissioner of licensing and regulation to adopt rules as required by Section 3C, Article 8861, V.T.C.S., not later than December 31, 1997.

(c) and (d) Make application of this Act prospective.

SECTION 15. Emergency clause.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

75th Regular Session

February 4, 1997

To: Honorable Carlos F. Truan, Chair
Committee on International Relations, Trade,
& Technology
Senate
Austin, Texas

IN RE: Senate Bill No. 229
By: Carona

From: John Keel, Director

In response to your request for a Fiscal Note on SB229 (Relating to the regulation of air conditioning and refrigeration contractors; providing penalties.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by SB229-As Introduced

No fiscal implication to the State is anticipated.

This bill would amend the Air Conditioning and Refrigeration Contractor License Law to add duct cleaning to the definition and clarify "air conditioning and refrigeration" work; increase the availability of examination locations; authorize municipalities to issue citations for violations; make all contracts with unlicensed workers invalid; allow municipalities to collect fees for administering and issuing licenses; and requires inspectors of air conditioning and refrigeration systems to hold licenses.

This bill authorizes municipalities the ability to issue citations for violations of the Air Conditioning and Refrigeration Contractors Law and collect appropriate fees for administering examinations, licenses and notification requirements. Local governments may incur costs of contractor notification, issuing licenses, and enforcing the requirements of the Act. Licensure will require administering examinations and incurring related costs. In addition, municipal citation processing will also incur administrative costs.

Source: Agencies: 452 Department of Licensing and Regulation
329 Real Estate Commission

ADOPTED
unanimous consent
FEB 13 1997

Butte Long
Secretary of the Senate

SHAPLEIGH

FLOOR AMENDMENT NO. 1

BY *Shapleigh*

Amend S.B. 229 as follows:

(1) Insert a new SECTION 7 of the bill (Committee Printing, page 2, between lines 28⁵ and 29⁶) to read as follows:

SECTION 7. Subsection (a), Section 6, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) This Act does not apply to a person who:

(1) performs air conditioning and refrigeration contracting in a building owned solely by him as his home;

(2) performs air conditioning or refrigeration maintenance work if (i) the person is a maintenance man or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the maintenance work is being performed, (ii) the work is performed in connection with the business in which the person is employed, and (iii) the person and the person's employer referred to in (i) above do not engage in the^{4/5} occupation of air conditioning and refrigeration contracting for the general public;

(3) performs air conditioning and refrigeration contracting and is regularly employed by a regulated electric or gas utility;

(4) is licensed as a professional engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil

1 Statutes), performs work in connection with the business in which
2 the person is employed, and does not engage in the practice of air
3 conditioning and refrigeration contracting for the general public;

4 (5) performs process cooling or heating work for an
5 industrial operation such as a chemical plant, petrochemical plant,
6 refinery, natural gas plant, or natural gas treating plant when
7 employed by that operation;

8 (6) performs air conditioning and refrigeration
9 contracting on:

10 (A) a portable or self-contained ductless air
11 conditioning or refrigeration product that has a cooling capacity
12 of three tons or less;

13 (B) a portable or self-contained heating product
14 that does not require the forced movement of air outside the
15 heating unit; or

16 (C) environmental air conditioning equipment
17 that is intended for temporary use and is not fixed in place; [or]

18 (7) performs air conditioning services only on a motor^{5/6}
19 vehicle air conditioning unit or who employs a person who performs
20 air conditioning services only on a motor vehicle air conditioning
21 unit; or

22 (8) performs air conditioning and refrigeration
23 maintenance work on evaporative coolers.

24 (2) Renumber current SECTION 7 and the subsequent sections
25 of the bill appropriately.

AMEND THE CAPTION TO CONFORM
TO THE BODY OF THE BILL

ADOPTED

FEB 13 1997


Secretary of the Senate

February 13 1997 Engrossed
Daisy Daw
Engrossing Clerk

By: Carona, Truan
(Kubiak)

S.B. No. 229

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of air conditioning and refrigeration
contractors; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivisions (7) and (9), Section 2, Air
Conditioning and Refrigeration Contractor License Law (Article
8861, Vernon's Texas Civil Statutes), are amended to read as
follows:

(7) "Air conditioning and refrigeration maintenance
work" means repair work and all other work required for the
continued normal performance of an environmental air conditioning
system, commercial refrigeration system or equipment, or process
cooling or heating system. The term does not include the
installation of a total replacement of the system or the
installation or repair of boilers or pressure vessels [~~that-must-be
installed-by-licensed-persons-pursuant--to--rules--and--regulations
adopted--by--the-commissioner~~] under Chapter 755, Health and Safety
Code.

(9) "Air conditioning and refrigeration contracting"
means the design, installation, construction, maintenance, service,
repair, alteration, or modification of a product or of equipment in
environmental air conditioning, commercial refrigeration, or
process cooling or heating systems. The term includes cleaning
equipment and duct materials as required for the proper operation

1 of such a system.

2 SECTION 2. Subsection (e), Section 3, Air Conditioning and
3 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
4 Civil Statutes), is amended to read as follows:

5 (e) The commissioner shall prescribe the method and content
6 of examinations administered under this Act and shall set
7 compliance requirements for the examinations. The examinations
8 ~~[shall--be-offered-only-in-Travis-County-and]~~ shall be offered on a
9 quarterly basis at locations designated by the commissioner.

10 SECTION 3. Section 3A, Air Conditioning and Refrigeration
11 Contractor License Law (Article 8861, Vernon's Texas Civil
12 Statutes), is amended by adding Subsection (i) to read as follows:

13 (i) Section 8, Article 6252-33, Revised Statutes, does not
14 apply to the advisory board.

15 SECTION 4. Section 3B, Air Conditioning and Refrigeration
16 Contractor License Law (Article 8861, Vernon's Texas Civil
17 Statutes), is amended to read as follows:

18 Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person
19 is exempted under Section 6 of this Act, a person may not perform
20 air conditioning and refrigeration contracting without a license
21 under this Act.

22 (b) A representative of the department or a municipal
23 official may issue a citation to a person who performs air
24 conditioning and refrigeration contracting without a license issued
25 under this Act. To the extent authorized by Chapter 29, Government

1 Code, the municipal court has concurrent jurisdiction with a
2 justice court of a precinct in which the municipality is located in
3 a case arising from a citation issued under this subsection.

4 SECTION 5. The Air Conditioning and Refrigeration Contractor
5 License Law (Article 8861, Vernon's Texas Civil Statutes) is
6 amended by adding Section 3C to read as follows:

7 Sec. 3C. ENFORCEMENT OF CONTRACTS. (a) A person who
8 performs air conditioning and refrigeration contracting without
9 holding the appropriate license under this Act may not collect a
10 fee or otherwise enforce a contract for the services performed. To
11 enforce a contract for the performance of air conditioning and
12 refrigeration contracting, the person who performs the services
13 must present proof that the person holds a license under this Act
14 at the time the contract is signed and the work performed.

15 (b) The commissioner shall adopt rules relating to the
16 manner in which proof may be presented under this section.

17 SECTION 6. Subsections (f) and (g), Section 4, Air
18 Conditioning and Refrigeration Contractor License Law (Article
19 8861, Vernon's Texas Civil Statutes), are amended to read as
20 follows:

21 (f) The application must be made on a form prescribed by the
22 commissioner and must specify the class of license and each
23 endorsement the applicant seeks. The application must be verified
24 and must be accompanied by:

25 (1) [~~evidence-of-the-insurance-coverage-required-under~~

1 ~~this-Act;~~

2 ~~[+2]~~ a statement of the applicant's practical
3 experience; and

4 ~~(2)~~ ~~[+3]~~ the examination fee.

5 (g) The commissioner shall issue an air conditioning and
6 refrigeration contractor license to an applicant who possesses the
7 required qualifications, passes the appropriate examinations,
8 furnishes evidence of the insurance coverage required under this
9 Act, and pays the ~~[examination-fee-and-the]~~ original license fee
10 required by this Act. An applicant who fails an examination is
11 eligible for reexamination.

12 SECTION 7. Subsection (a), Section 6, Air Conditioning and
13 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
14 Civil Statutes), is amended to read as follows:

15 (a) This Act does not apply to a person who:

16 (1) performs air conditioning and refrigeration
17 contracting in a building owned solely by him as his home;

18 (2) performs air conditioning or refrigeration
19 maintenance work if (i) the person is a maintenance man or
20 maintenance engineer who is a regular bona fide employee of the
21 property owner, the property lessee, or the management company
22 managing the property where the maintenance work is being
23 performed, (ii) the work is performed in connection with the
24 business in which the person is employed, and (iii) the person and
25 the person's employer referred to in (i) above do not engage in the

1 occupation of air conditioning and refrigeration contracting for
2 the general public;

3 (3) performs air conditioning and refrigeration
4 contracting and is regularly employed by a regulated electric or
5 gas utility;

6 (4) is licensed as a professional engineer under The
7 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil
8 Statutes), performs work in connection with the business in which
9 the person is employed, and does not engage in the practice of air
10 conditioning and refrigeration contracting for the general public;

11 (5) performs process cooling or heating work for an
12 industrial operation such as a chemical plant, petrochemical plant,
13 refinery, natural gas plant, or natural gas treating plant when
14 employed by that operation;

15 (6) performs air conditioning and refrigeration
16 contracting on:

17 (A) a portable or self-contained ductless air
18 conditioning or refrigeration product that has a cooling capacity
19 of three tons or less;

20 (B) a portable or self-contained heating product
21 that does not require the forced movement of air outside the
22 heating unit; or

23 (C) environmental air conditioning equipment
24 that is intended for temporary use and is not fixed in place; [or]

25 (7) performs air conditioning services only on a motor

1 vehicle air conditioning unit or who employs a person who performs
2 air conditioning services only on a motor vehicle air conditioning
3 unit; or

4 (8) performs air conditioning and refrigeration
5 maintenance work on evaporative coolers.

6 SECTION 8. Section 7, Air Conditioning and Refrigeration
7 Contractor License Law (Article 8861, Vernon's Texas Civil
8 Statutes), is amended to read as follows:

9 Sec. 7. REPORTING REQUIREMENT. (a) Each air conditioning
10 and refrigeration contractor [person] licensed under this Act shall
11 notify the municipal authority who has control of the enforcement
12 of regulations relative to air conditioning and refrigeration
13 contracting in the municipality in which the person is engaged in
14 air conditioning and refrigeration contracting that the person has
15 obtained a state license.

16 (b) The notification must be in the form required by the
17 municipality.

18 (c) The amount of a fee imposed by a municipality on a
19 contractor to provide notice under this section may be set by the
20 municipality only in the amount reasonable and necessary to
21 implement this section.

22 SECTION 9. Section 8, Air Conditioning and Refrigeration
23 Contractor License Law (Article 8861, Vernon's Texas Civil
24 Statutes), is amended to read as follows:

25 Sec. 8. PENALTY. Except as provided in Section 9, a person

1 commits an offense if the person knowingly or intentionally engages
2 in air conditioning and refrigeration contracting without a license
3 issued under this Act. An offense under this section is a Class A
4 [B] misdemeanor.

5 SECTION 10. Section 9, Air Conditioning and Refrigeration
6 Contractor License Law (Article 8861, Vernon's Texas Civil
7 Statutes), is amended to read as follows:

8 Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a
9 municipality of this state that complies with the requirements of
10 this section is valid under the terms of the license within that
11 municipality. However, a license issued under this Act is valid
12 throughout the state, and the holder and people under supervision
13 are not required to hold a municipal license to practice air
14 conditioning and refrigeration contracting in any municipality
15 within this state.

16 (b) An applicant for a municipal license must:

17 (1) pass an examination that covers the same subjects
18 as the examination required by the commissioner for an air
19 conditioning and refrigeration contractor license of the class of
20 work that the municipal applicant proposes to perform; and

21 (2) meet experience requirements that are at least as
22 strict as those required under Section 4(e) of this Act for an air
23 conditioning and refrigeration contractor license.

24 (c) A municipality may by ordinance adopt and enforce
25 standards for air conditioning and refrigeration contractors that

1 are consistent with the standards established under this Act. The
2 municipality shall report violations of the ordinance to the
3 commissioner not later than the 10th day after the date on which
4 the municipality takes action to enforce the ordinance. Conviction
5 of an offense under the municipal ordinance is a ground for the
6 denial, suspension, or revocation of a license issued under this
7 Act.

8 SECTION 11. Subsection (c), Section 23, The Real Estate
9 License Act (Article 6573a, Vernon's Texas Civil Statutes), is
10 amended by adding Subdivision (4) to read as follows:

11 (4) In addition to the license requirements imposed
12 under Subdivisions (1), (2), and (3) of this subsection, a business
13 entity that inspects an environmental air conditioning system,
14 commercial refrigeration system, or process cooling or heating
15 system as part of a real estate inspection conducted under this Act
16 must employ a person who holds the appropriate air conditioning and
17 refrigeration contractor licenses and endorsements under the Air
18 Conditioning and Refrigeration Contractor License Law (Article
19 8861, Vernon's Texas Civil Statutes). An employee who does not
20 hold a license or endorsement under the Air Conditioning and
21 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
22 Civil Statutes) may perform the inspection under the direction of
23 the license holder. For purposes of this Act, "inspection" of
24 environmental air conditioning, commercial refrigeration, and
25 process cooling and heating equipment means an inspection that

1 includes the use of electronic instruments, gauges, thermometers,
2 mechanical instruments, or other meters that require direct in-line
3 connection to the refrigeration system.

4 SECTION 12. Section 25, Residential Service Company Act
5 (Article 6573b, Revised Statutes), is amended to read as follows:

6 Sec. 25. EXEMPTIONS. The provisions of this Act shall not
7 apply to any of the following persons and transactions, and each
8 and all of the following persons and transactions are hereby
9 exempted from the provisions of this Act, to wit:

10 (a) performance guarantees given by either the builder
11 of a home or the manufacturer or seller of an appliance or other
12 system or component;

13 (b) any residential service contract executed on or
14 before the effective date of this Act;

15 (c) any service contract, guarantee, or warranty
16 intending to guarantee or warrant the repairs or service of a home
17 appliance, system, or component, provided such service contract,
18 guarantee, or warranty is issued by a person who has sold,
19 serviced, repaired, or provided replacement of such appliance,
20 system, or component at the time of, or prior to the issuance of
21 such contract, guarantee, or warranty; and provided further that
22 the person issuing the service contract, guarantee, or warranty
23 does not engage in the business of a service company;

24 (d) any person engaging in the business of structural
25 pest control in compliance with the Texas Structural Pest Control

1 Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes,
2 1925);

3 (e) any person who performs air conditioning and
4 refrigeration contracting in compliance with the Air Conditioning
5 and Refrigeration Contractor License Law (Article 8861, Vernon's
6 Texas Civil Statutes); and

7 (f) any service or maintenance contract or agreement,
8 or warranty, which provides for, warrants, or guarantees, the
9 maintenance, repair, service, replacement, or operation or
10 performance, of any product or part thereof, including but not
11 limited to a structural component, the appliances, or the
12 electrical, plumbing, heating, cooling or air-conditioning systems
13 in or of a building or residence, provided such service or
14 maintenance contract or agreement, or warranty is sold, offered for
15 sale, or issued by the manufacturer or merchant who manufactured or
16 sold such product or part thereof.

17 SECTION 13. (a) The change in law made to Section 8, Air
18 Conditioning and Refrigeration Contractor License Law (Article
19 8861, Vernon's Texas Civil Statutes), by this Act applies only to
20 an offense committed on or after the effective date of this Act.
21 For purposes of this section, an offense is committed before the
22 effective date of this Act if any element of the offense occurs
23 before that date.

24 (b) An offense committed before the effective date of this
25 Act is governed by the law in effect when the offense was

1 committed, and the former law is continued in effect for that
2 purpose.

3 SECTION 14. (a) Except as provided by Subsection (b) of
4 this section, the change in law made to Section 9, Air Conditioning
5 and Refrigeration Contractor License Law (Article 8861, Vernon's
6 Texas Civil Statutes), by this Act applies to a municipal license
7 that is issued or renewed on or after the effective date of this
8 Act. A municipality subject to that section shall adopt
9 examination requirements in compliance with that section not later
10 than January 1, 1998.

11 (b) To continue to engage in the practice of air
12 conditioning and refrigeration contracting after September 1, 1997,
13 a person who holds a municipal license on the effective date of
14 this Act must satisfy the examination requirements imposed under
15 Subsection (b), Section 9, Air Conditioning and Refrigeration
16 Contractor License Law (Article 8861, Vernon's Texas Civil
17 Statutes), as amended by this Act, not later than June 1, 1998.

18 SECTION 15. (a) This Act takes effect September 1, 1997.

19 (b) Not later than December 31, 1997, the commissioner of
20 licensing and regulation shall adopt rules as required by Section
21 3C, Air Conditioning and Refrigeration Contractor License Law
22 (Article 8861, Vernon's Texas Civil Statutes), as added by this
23 Act.

24 (c) Subsection (c), Section 23, The Real Estate License Act
25 (Article 6573a, Vernon's Texas Civil Statutes), as amended by this

1 Act, applies only to a real estate inspection that is conducted on
2 or after the effective date of this Act. A real estate inspection
3 conducted before that date is governed by the law in effect on the
4 date that the inspection occurs, and the former law is continued in
5 effect for that purpose.

6 (d) Section 25, Residential Service Company Act (Article
7 6573b, Revised Statutes), as amended by this Act, applies only to a
8 residential service contract that is entered into on or after the
9 effective date of this Act. A residential service contract that is
10 entered into before that date is governed by the law in effect on
11 the date that the contract is entered into, and the former law is
12 continued in effect for that purpose.

13 SECTION 16. The importance of this legislation and the
14 crowded condition of the calendars in both houses create an
15 emergency and an imperative public necessity that the
16 constitutional rule requiring bills to be read on three several
17 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE AMENDMENT NO. 1

Amend SB 229 in Section 7 of the bill as follows:

Page 6, line 5, after "on" add "residential"; and after "evaporative coolers" add "up to and including 6,500 cubic feet per minute (cfm)."

Pickett

COMMITTEE AMENDMENT NO. 2

Amend SB 229 by adding the following:

In SECTION 1 of the bill, pg. 1, line 9 add the following:

(6) "Person" means an individual, a firm, partnership, corporation, association or other organization, or any combination of any thereof.

In SECTION 1 of the bill, insert a new Subsection 14 and 15 as follows:

(14) "Air conditioning and refrigeration contracting company" means any person, corporation, partnership, association, or other entity that performs air conditioning and refrigeration contracting.

(15) "Direct Personal Supervision" means directing and verifying work requiring a license under the Act by means of hiring, training, and consulting with employees, personally observing and checking work of employees, and having responsibility for handling customer complaints.

Pickett

COMMITTEE AMENDMENT NO. 3

1 Amend SB 229 by adding the following:

2 In SECTION 4 of the bill, Amend Sec. 3B by adding the
3 following:

4 (a) Unless the person is exempted under Section 6 of this
5 Act, a person may not perform air conditioning and refrigeration
6 contracting without a license under this Act. A person is not
7 required to be individually licensed under the Act if the person is
8 a bona fide employee of a company which has a license holder who
9 has direct personal supervision over him or her.

10 (b) An air conditioning and refrigeration contracting
11 company that is not exempt under the Act must employ a license
12 holder(s) in each permanent office whose license is assigned to
13 that company.

14 In SECTION 7 of the bill, Amend as follows:

15 (g) A person who assists in the performance of air
16 conditioning and refrigeration contracting work under the
17 supervision of a licensee as a bona fide employee is not required
18 to be licensed.

19 Pickett

20 COMMITTEE AMENDMENT NO. 4

21 Amend SB 229 as follows:

22 Amendment to Committee Amendment #3 to read as follows:

23 (b) An air conditioning and refrigeration contracting
24 company that is not exempt under the Act must employ a license
25 holder(s) [~~in--each-permanent-office~~] whose license is assigned to

that company.

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
75th Regular Session

February 4, 1997

To: Honorable Carlos F. Truan, Chair
Committee on International Relations, Trade,
& Technology
Senate
Austin, Texas

IN RE: Senate Bill No. 229
By: Carona

From: John Keel, Director

In response to your request for a Fiscal Note on SB229 (Relating to the regulation of air conditioning and refrigeration contractors; providing penalties.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by SB229-As Introduced

No fiscal implication to the State is anticipated.

This bill would amend the Air Conditioning and Refrigeration Contractor License Law to add duct cleaning to the definition and clarify "air conditioning and refrigeration" work; increase the availability of examination locations; authorize municipalities to issue citations for violations; make all contracts with unlicensed workers invalid; allow municipalities to collect fees for administering and issuing licenses; and requires inspectors of air conditioning and refrigeration systems to hold licenses.

This bill authorizes municipalities the ability to issue citations for violations of the Air Conditioning and Refrigeration Contractors Law and collect appropriate fees for administering examinations, licenses and notification requirements. Local governments may incur costs of contractor notification, issuing licenses, and enforcing the requirements of the Act. Licensure will require administering examinations and incurring related costs. In addition, municipal citation processing will also incur administrative costs.

Source: Agencies: 452 Department of Licensing and Regulation
329 Real Estate Commission

57 APR -3 PM 3:25
HOUSE REPRESENTATIVE

HOUSE COMMITTEE REPORT

1st Printing

By: Carona, Truan
(Kubiak)

S.B. No. 229

A BILL TO BE ENTITLED

AN ACT

1 relating to the regulation of air conditioning and refrigeration
2 contractors; providing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Subdivisions (7) and (9), Section 2, Air
5 Conditioning and Refrigeration Contractor License Law (Article
6 8861, Vernon's Texas Civil Statutes), are amended to read as
7 follows:

8 (7) "Air conditioning and refrigeration maintenance
9 work" means repair work and all other work required for the
10 continued normal performance of an environmental air conditioning
11 system, commercial refrigeration system or equipment, or process
12 cooling or heating system. The term does not include the
13 installation of a total replacement of the system or the
14 installation or repair of boilers or pressure vessels [~~that-must-be~~
15 ~~installed-by-licensed-persons-pursuant--to--rules--and--regulations~~
16 ~~adopted--by--the-commissioner~~] under Chapter 755, Health and Safety
17 Code.

18 (9) "Air conditioning and refrigeration contracting"
19 means the design, installation, construction, maintenance, service,
20 repair, alteration, or modification of a product or of equipment in
21 environmental air conditioning, commercial refrigeration, or
22 process cooling or heating systems. The term includes cleaning
23 equipment and duct materials as required for the proper operation

1 of such a system.

2 SECTION 2. Subsection (e), Section 3, Air Conditioning and
3 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
4 Civil Statutes), is amended to read as follows:

5 (e) The commissioner shall prescribe the method and content
6 of examinations administered under this Act and shall set
7 compliance requirements for the examinations. The examinations
8 ~~[shall--be-offered-only-in-Travis-County-and]~~ shall be offered on a
9 quarterly basis at locations designated by the commissioner.

10 SECTION 3. Section 3A, Air Conditioning and Refrigeration
11 Contractor License Law (Article 8861, Vernon's Texas Civil
12 Statutes), is amended by adding Subsection (i) to read as follows:

13 (i) Section 8, Article 6252-33, Revised Statutes, does not
14 apply to the advisory board.

15 SECTION 4. Section 3B, Air Conditioning and Refrigeration
16 Contractor License Law (Article 8861, Vernon's Texas Civil
17 Statutes), is amended to read as follows:

18 Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person
19 is exempted under Section 6 of this Act, a person may not perform
20 air conditioning and refrigeration contracting without a license
21 under this Act.

22 (b) A representative of the department or a municipal
23 official may issue a citation to a person who performs air
24 conditioning and refrigeration contracting without a license issued
25 under this Act. To the extent authorized by Chapter 29, Government

1 Code, the municipal court has concurrent jurisdiction with a
2 justice court of a precinct in which the municipality is located in
3 a case arising from a citation issued under this subsection.

4 SECTION 5. The Air Conditioning and Refrigeration Contractor
5 License Law (Article 8861, Vernon's Texas Civil Statutes) is
6 amended by adding Section 3C to read as follows:

7 Sec. 3C. ENFORCEMENT OF CONTRACTS. (a) A person who
8 performs air conditioning and refrigeration contracting without
9 holding the appropriate license under this Act may not collect a
10 fee or otherwise enforce a contract for the services performed. To
11 enforce a contract for the performance of air conditioning and
12 refrigeration contracting, the person who performs the services
13 must present proof that the person holds a license under this Act
14 at the time the contract is signed and the work performed.

15 (b) The commissioner shall adopt rules relating to the
16 manner in which proof may be presented under this section.

17 SECTION 6. Subsections (f) and (g), Section 4, Air
18 Conditioning and Refrigeration Contractor License Law (Article
19 8861, Vernon's Texas Civil Statutes), are amended to read as
20 follows:

21 (f) The application must be made on a form prescribed by the
22 commissioner and must specify the class of license and each
23 endorsement the applicant seeks. The application must be verified
24 and must be accompanied by:

25 (1) ~~[evidence-of-the-insurance-coverage-required-under~~

1 ~~this-Act;~~

2 ~~[(2)]~~ a statement of the applicant's practical
3 experience; and

4 (2) ~~[(3)]~~ the examination fee.

5 (g) The commissioner shall issue an air conditioning and
6 refrigeration contractor license to an applicant who possesses the
7 required qualifications, passes the appropriate examinations,
8 furnishes evidence of the insurance coverage required under this
9 Act, and pays the ~~[examination-fee-and-the]~~ original license fee
10 required by this Act. An applicant who fails an examination is
11 eligible for reexamination.

12 SECTION 7. Subsection (a), Section 6, Air Conditioning and
13 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
14 Civil Statutes), is amended to read as follows:

15 (a) This Act does not apply to a person who:

16 (1) performs air conditioning and refrigeration
17 contracting in a building owned solely by him as his home;

18 (2) performs air conditioning or refrigeration
19 maintenance work if (i) the person is a maintenance man or
20 maintenance engineer who is a regular bona fide employee of the
21 property owner, the property lessee, or the management company
22 managing the property where the maintenance work is being
23 performed, (ii) the work is performed in connection with the
24 business in which the person is employed, and (iii) the person and
25 the person's employer referred to in (i) above do not engage in the

1 occupation of air conditioning and refrigeration contracting for
2 the general public;

3 (3) performs air conditioning and refrigeration
4 contracting and is regularly employed by a regulated electric or
5 gas utility;

6 (4) is licensed as a professional engineer under The
7 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil
8 Statutes), performs work in connection with the business in which
9 the person is employed, and does not engage in the practice of air
10 conditioning and refrigeration contracting for the general public;

11 (5) performs process cooling or heating work for an
12 industrial operation such as a chemical plant, petrochemical plant,
13 refinery, natural gas plant, or natural gas treating plant when
14 employed by that operation;

15 (6) performs air conditioning and refrigeration
16 contracting on:

17 (A) a portable or self-contained ductless air
18 conditioning or refrigeration product that has a cooling capacity
19 of three tons or less;

20 (B) a portable or self-contained heating product
21 that does not require the forced movement of air outside the
22 heating unit; or

23 (C) environmental air conditioning equipment
24 that is intended for temporary use and is not fixed in place; [or]

25 (7) performs air conditioning services only on a motor

1 vehicle air conditioning unit or who employs a person who performs
2 air conditioning services only on a motor vehicle air conditioning
3 unit; or

4 (8) performs air conditioning and refrigeration
5 maintenance work on evaporative coolers.

6 SECTION 8. Section 7, Air Conditioning and Refrigeration
7 Contractor License Law (Article 8861, Vernon's Texas Civil
8 Statutes), is amended to read as follows:

9 Sec. 7. REPORTING REQUIREMENT. (a) Each air conditioning
10 and refrigeration contractor [person] licensed under this Act shall
11 notify the municipal authority who has control of the enforcement
12 of regulations relative to air conditioning and refrigeration
13 contracting in the municipality in which the person is engaged in
14 air conditioning and refrigeration contracting that the person has
15 obtained a state license.

16 (b) The notification must be in the form required by the
17 municipality.

18 (c) The amount of a fee imposed by a municipality on a
19 contractor to provide notice under this section may be set by the
20 municipality only in the amount reasonable and necessary to
21 implement this section.

22 SECTION 9. Section 8, Air Conditioning and Refrigeration
23 Contractor License Law (Article 8861, Vernon's Texas Civil
24 Statutes), is amended to read as follows:

25 Sec. 8. PENALTY. Except as provided in Section 9, a person

1 commits an offense if the person knowingly or intentionally engages
2 in air conditioning and refrigeration contracting without a license
3 issued under this Act. An offense under this section is a Class A
4 [B] misdemeanor.

5 SECTION 10. Section 9, Air Conditioning and Refrigeration
6 Contractor License Law (Article 8861, Vernon's Texas Civil
7 Statutes), is amended to read as follows:

8 Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a
9 municipality of this state that complies with the requirements of
10 this section is valid under the terms of the license within that
11 municipality. However, a license issued under this Act is valid
12 throughout the state, and the holder and people under supervision
13 are not required to hold a municipal license to practice air
14 conditioning and refrigeration contracting in any municipality
15 within this state.

16 (b) An applicant for a municipal license must:

17 (1) pass an examination that covers the same subjects
18 as the examination required by the commissioner for an air
19 conditioning and refrigeration contractor license of the class of
20 work that the municipal applicant proposes to perform; and

21 (2) meet experience requirements that are at least as
22 strict as those required under Section 4(e) of this Act for an air
23 conditioning and refrigeration contractor license.

24 (c) A municipality may by ordinance adopt and enforce
25 standards for air conditioning and refrigeration contractors that

are consistent with the standards established under this Act. The municipality shall report violations of the ordinance to the commissioner not later than the 10th day after the date on which the municipality takes action to enforce the ordinance. Conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license issued under this Act.

SECTION 11. Subsection (c), Section 23, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by adding Subdivision (4) to read as follows:

(4) In addition to the license requirements imposed under Subdivisions (1), (2), and (3) of this subsection, a business entity that inspects an environmental air conditioning system, commercial refrigeration system, or process cooling or heating system as part of a real estate inspection conducted under this Act must employ a person who holds the appropriate air conditioning and refrigeration contractor licenses and endorsements under the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes). An employee who does not hold a license or endorsement under the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) may perform the inspection under the direction of the license holder. For purposes of this Act, "inspection" of environmental air conditioning, commercial refrigeration, and process cooling and heating equipment means an inspection that

1 includes the use of electronic instruments, gauges, thermometers,
2 mechanical instruments, or other meters that require direct in-line
3 connection to the refrigeration system.

4 SECTION 12. Section 25, Residential Service Company Act
5 (Article 6573b, Revised Statutes), is amended to read as follows:

6 Sec. 25. EXEMPTIONS. The provisions of this Act shall not
7 apply to any of the following persons and transactions, and each
8 and all of the following persons and transactions are hereby
9 exempted from the provisions of this Act, to wit:

10 (a) performance guarantees given by either the builder
11 of a home or the manufacturer or seller of an appliance or other
12 system or component;

13 (b) any residential service contract executed on or
14 before the effective date of this Act;

15 (c) any service contract, guarantee, or warranty
16 intending to guarantee or warrant the repairs or service of a home
17 appliance, system, or component, provided such service contract,
18 guarantee, or warranty is issued by a person who has sold,
19 serviced, repaired, or provided replacement of such appliance,
20 system, or component at the time of, or prior to the issuance of
21 such contract, guarantee, or warranty; and provided further that
22 the person issuing the service contract, guarantee, or warranty
23 does not engage in the business of a service company;

24 (d) any person engaging in the business of structural
25 pest control in compliance with the Texas Structural Pest Control

1 Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes,
2 1925);

3 (e) any person who performs air conditioning and
4 refrigeration contracting in compliance with the Air Conditioning
5 and Refrigeration Contractor License Law (Article 8861, Vernon's
6 Texas Civil Statutes); and

7 (f) any service or maintenance contract or agreement,
8 or warranty, which provides for, warrants, or guarantees, the
9 maintenance, repair, service, replacement, or operation or
10 performance, of any product or part thereof, including but not
11 limited to a structural component, the appliances, or the
12 electrical, plumbing, heating, cooling or air-conditioning systems
13 in or of a building or residence, provided such service or
14 maintenance contract or agreement, or warranty is sold, offered for
15 sale, or issued by the manufacturer or merchant who manufactured or
16 sold such product or part thereof.

17 SECTION 13. (a) The change in law made to Section 8, Air
18 Conditioning and Refrigeration Contractor License Law (Article
19 8861, Vernon's Texas Civil Statutes), by this Act applies only to
20 an offense committed on or after the effective date of this Act.
21 For purposes of this section, an offense is committed before the
22 effective date of this Act if any element of the offense occurs
23 before that date.

24 (b) An offense committed before the effective date of this
25 Act is governed by the law in effect when the offense was

1 committed, and the former law is continued in effect for that
2 purpose.

3 SECTION 14. (a) Except as provided by Subsection (b) of
4 this section, the change in law made to Section 9, Air Conditioning
5 and Refrigeration Contractor License Law (Article 8861, Vernon's
6 Texas Civil Statutes), by this Act applies to a municipal license
7 that is issued or renewed on or after the effective date of this
8 Act. A municipality subject to that section shall adopt
9 examination requirements in compliance with that section not later
10 than January 1, 1998.

11 (b) To continue to engage in the practice of air
12 conditioning and refrigeration contracting after September 1, 1997,
13 a person who holds a municipal license on the effective date of
14 this Act must satisfy the examination requirements imposed under
15 Subsection (b), Section 9, Air Conditioning and Refrigeration
16 Contractor License Law (Article 8861, Vernon's Texas Civil
17 Statutes), as amended by this Act, not later than June 1, 1998.

18 SECTION 15. (a) This Act takes effect September 1, 1997.

19 (b) Not later than December 31, 1997, the commissioner of
20 licensing and regulation shall adopt rules as required by Section
21 3C, Air Conditioning and Refrigeration Contractor License Law
22 (Article 8861, Vernon's Texas Civil Statutes), as added by this
23 Act.

24 (c) Subsection (c), Section 23, The Real Estate License Act
25 (Article 6573a, Vernon's Texas Civil Statutes), as amended by this

1 Act, applies only to a real estate inspection that is conducted on
2 or after the effective date of this Act. A real estate inspection
3 conducted before that date is governed by the law in effect on the
4 date that the inspection occurs, and the former law is continued in
5 effect for that purpose.

6 (d) Section 25, Residential Service Company Act (Article
7 6573b, Revised Statutes), as amended by this Act, applies only to a
8 residential service contract that is entered into on or after the
9 effective date of this Act. A residential service contract that is
10 entered into before that date is governed by the law in effect on
11 the date that the contract is entered into, and the former law is
12 continued in effect for that purpose.

13 SECTION 16. The importance of this legislation and the
14 crowded condition of the calendars in both houses create an
15 emergency and an imperative public necessity that the
16 constitutional rule requiring bills to be read on three several
17 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE AMENDMENT NO. 1

Amend SB 229 in Section 7 of the bill as follows:

Page 6, line 5, after "on" add "residential"; and after "evaporative coolers" add "up to and including 6,500 cubic feet per minute (cfm)."

Pickett

COMMITTEE AMENDMENT NO. 2

Amend SB 229 by adding the following:

In SECTION 1 of the bill, pg. 1, line 9 add the following:

(6) "Person" means an individual, a firm, partnership, corporation, association or other organization, or any combination of any thereof.

In SECTION 1 of the bill, insert a new Subsection 14 and 15 as follows:

(14) "Air conditioning and refrigeration contracting company" means any person, corporation, partnership, association, or other entity that performs air conditioning and refrigeration contracting.

(15) "Direct Personal Supervision" means directing and verifying work requiring a license under the Act by means of hiring, training, and consulting with employees, personally observing and checking work of employees, and having responsibility for handling customer complaints.

Pickett

COMMITTEE AMENDMENT NO. 3

1 Amend SB 229 by adding the following:

2 In SECTION 4 of the bill, Amend Sec. 3B by adding the
3 following:

4 (a) Unless the person is exempted under Section 6 of this
5 Act, a person may not perform air conditioning and refrigeration
6 contracting without a license under this Act. A person is not
7 required to be individually licensed under the Act if the person is
8 a bona fide employee of a company which has a license holder who
9 has direct personal supervision over him or her.

10 (b) An air conditioning and refrigeration contracting
11 company that is not exempt under the Act must employ a license
12 holder(s) in each permanent office whose license is assigned to
13 that company.

14 In SECTION 7 of the bill, Amend as follows:

15 (g) A person who assists in the performance of air
16 conditioning and refrigeration contracting work under the
17 supervision of a licensee as a bona fide employee is not required
18 to be licensed.

19 Pickett

20 COMMITTEE AMENDMENT NO. 4

21 Amend SB 229 as follows:

22 Amendment to Committee Amendment #3 to read as follows:

23 (b) An air conditioning and refrigeration contracting
24 company that is not exempt under the Act must employ a license
25 holder(s) [~~in--each-permanent-office~~] whose license is assigned to

1 that company.

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COMMITTEE REPORT

The Honorable James E. "Pete" Laney
Speaker of the House of Representatives

3/17/97
(date)

Sir:

We, your COMMITTEE ON LICENSING AND ADMINISTRATIVE PROCEDURES

to whom was referred SB 229 have had the same under consideration and beg to report back with the recommendation that it

- ☐ do pass, without amendment.
- ☒ do pass, with amendment(s).
- ☐ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- ☒ yes ☐ no A fiscal note was requested.
- ☐ yes ☒ no A criminal justice policy impact statement was requested.
- ☐ yes ☒ no An equalized educational funding impact statement was requested.
- ☐ yes ☒ no An actuarial analysis was requested.
- ☐ yes ☒ no A water development policy impact statement was requested.
- ☐ yes ☒ no A tax equity note was requested.
- ☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor Kubiak

Joint Sponsors: / / /

Co-Sponsors:

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Wilson, Chair				X
Kubiak, Vice-chair	X			
Goolsby	X			
Haggerty	X			
Hamric				X
Jones, D.				X
Pickett	X			
Torres	X			
Yarbrough	X			

Total
6 aye
0 nay
0 present, not voting
3 absent

Ron Wilson
CHAIR

BILL ANALYSIS

LICENSING & ADMINISTRATIVE PROCEDURES

S.B. 229

By: Carona (Kubiak)

3-17-97

Committee Report (Amended)

BACKGROUND

The Air Conditioning and Refrigeration Contractor License Law (Article 8861, V.T.C.S.) requires those persons engaging in environmental air conditioning, commercial refrigeration, or process heating or cooling to be examined and licensed by the State of Texas. S.B. 229 sets forth regulations and penalties pertaining to air conditioning and refrigeration contracting that are related to the need for establishing certain license practices and enforcing contracts.

PURPOSE

As proposed, S.B. 229 sets forth regulations and penalties pertaining to air conditioning and refrigeration contracting.

RULEMAKING AUTHORITY

As proposed, S.B. 229 sets forth regulations and penalties pertaining to air conditioning and refrigeration contracting.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 2(7) and (9), Article 8861, V.T.C.S. (Air Conditioning and Refrigeration Contractor License Law) to redefine "air conditioning and refrigeration maintenance word" and "air conditioning and refrigeration contracting."

SECTION 2. Amends Section 3(e), Article 8861, V.T.C.S., to requires the examinations to be offered on a quarterly basis at locations designated by the Texas Commissioner of Licensing and Regulation (commissioner),

SECTION 3. Amends Section 3A, Article 8861, V.T.C.S., by adding Subsection (i), to provide that Section 8, Article 6252-33, V.T.C.S., does no apply to the Air Conditioning and Refrigeration Contractors Advisory Board (advisory board).

SECTION 4. Amends Section 3B, Article 8861, V.T.C.S., as follows:

Sec. 3B. New heading: LICENSE REQUIRED; CITATION. Authorizes a representative of the Department of Licensing and Regulation (department) or a municipal official to issue a citation to a person who performs air conditioning and refrigeration contracting without a license issued under this Act. Provides that the municipal court has concurrent jurisdiction with a justice court of a precinct in which the municipality is located in a case arising from a citation issued under this subsection to the extent authorized by Chapter 29, Government Code. Makes a conforming change.

SECTION 5. Amends Article 8861, V.T.C.S., by adding Section 3C, as follows:

Sec. 3C. ENFORCEMENT OF CONTRACTS. Prohibits a person who performs air conditioning and refrigeration contracting without holding the appropriate license from collecting a fee or otherwise enforcing a contract for the services performed. Requires a person to present proof that the person holds license at the time the contract is signed and

the work performed in order to enforce a contract. Requires the commissioner to adopt rules relating to the manner in which proof may be presented under this section.

SECTION 6. Amends Section 4(f) and (g), Article 8861, V.T.C.S., to delete text requiring an application to be accompanied by evidence of the insurance coverage required under this Act. Requires the commissioner to issue an air conditioning and refrigeration contractor license to a person who furnishes evidence of the insurance coverage and performs certain activities required under this Act. Makes conforming and nonsubstantive changes.

SECTION 7. REPORTING REQUIREMENT. Amends Section 7, Article 8861, V.T.C.S., to require each air conditioning and refrigeration contractor, rather than that person, to notify the corresponding municipal authority that the person has obtained a state license. Authorizes the amount of a fee imposed on a contractor to be set by the municipality only in the amount reasonable and necessary to implement this section. Makes conforming changes.

SECTION 8. Amends Section 8, Article 8861, V.T.C.S., to provide that a person commits a Class A, rather than Class B, misdemeanor if the person knowingly and intentionally engages in air conditioning and refrigeration contracting without a license.

SECTION 9. Amends Section 9, Article 8861, V.T.C.S., to provide that a license issued by a municipality of this state that complies with the requirements of this section is valid under the terms of the license within that municipality. Requires an applicant for a municipal license to pass an examination and meet specific experience requirements. Makes a conforming change.

SECTION 10. Amends Section 23(c), Article 6573a, V.T.C.S., (The Real Estate License Act) by adding Subdivision (4), to require a business entity that inspects certain systems as part of a real estate inspection to employ a person who holds the appropriate air conditioning and refrigeration contractor licenses and endorsements under Article 8861, V.T.C.S. Authorizes an employee who does not hold a license or endorsement to perform the inspection under the direction of the license holder. Defines "inspection."

SECTION 11. Amends Section 25, Article 6573b, V.T.C.S., (Residential Service Company Act) to provide that any person who performs air conditioning refrigeration in compliance with the Air Conditioning and Refrigeration Contractor License Law, Article 8861, V.T.C.S., is exempt from the provisions of this Act. Makes a conforming change.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Provides that the change in law made to SECTION 9, Article 8861, V.T.C.S., except as provided by Subsection (b), prospective. Requires a municipality to adopt examination requirements in compliance with this section not later than January 1, 1998. Requires a person who holds a municipal license to satisfy the examination requirements imposed under Section 9(b), Article 8861, V.T.C.S., not later than June 1, 1998.

SECTION 14. (a) Effective date: September 1, 1997.

(b) Requires the commissioner of licensing and regulation to adopt rules as required by Section 3C, Article 8861, V.T.C.S., not later than December 31, 1997.

(c) and (d) Make application of this Act prospective.

SECTION 15. Emergency clause.

EXPLANATION OF AMENDMENTS

Committee Amendment #1 amends Section 7 on page 6, line 5, after "on" add "residential"; after "evaporate coolers" add "up to and including 6,500 cubic feet per minute (cfm)"

Committee Amendment #2 amends SECTION 1, pg.1, line 9, (6) "Person" means an individual,

a firm, partnership, corporation, association or other organization, or any combination of any thereof.

In SECTION 1 of the bill, insert an new Subsection 14 and 15 as follows:

(14) "Air conditioning and refrigeration contracting company" means any person, corporation, partnership, association, or other entity that performs air conditioning and refrigeration contracting.

(15) "Direct Personal Supervision" means directing and verifying work requiring a license under the Act by means of hiring, training, and consulting with employees, personally observing and checking work of employees, and having responsibility for handling customer complaints.

Committee Amendment #3 amends SECTION 4, by amending Sec 3B as follows:

(a) Unless the person is exempted under Section 6 of this Act, a person may not perform air conditioning and refrigeration contracting without a license under this Act. A person is not required to be individually licensed under the Act if the person is a bona fide employee of a company which has a license holder who has direct personal supervision over him or her.

(b) An air conditioning and refrigeration contracting company that is not exempt under the Act must employ a license holder(s) in each permanent office whose license is assigned to that company.

In SECTION 7, Amend as follows:

(g) A person who assists in the performance of air conditioning and refrigeration contracting work under the supervision of a licensee as a bona fide employee is not required to be licensed.

Committee Amendment #4 amends Committee Amendment #3 as follows:

(b) An air conditioning and refrigeration contracting company that is not exempt under the Act must employ a license holder(s) in each permanent office whose license is assigned to that company.

Committee Amendment #5 amends Page 1, line 22 as follows: ~~"The term includes cleaning equipment and duct materials as required for the proper operation of such a system."~~

SUMMARY OF COMMITTEE ACTION

SB 229

March 10, 1997 10:30AM

Considered in public hearing
Testimony taken in committee
Amendment(s) considered in committee
Left pending in committee

March 17, 1997 10:30AM

Considered in public hearing
Amendment(s) considered in committee
Reported favorably as amended

WITNESS LIST

SB 229
HOUSE COMMITTEE REPORT
Licensing & Administrative Procedures Committee

March 10, 1997 - 10:30A

For: Tom Romberg (AMSI/TACCA)
On: Pauline Denson (TDLR)

LEGISLATIVE BUDGET BOARD

Austin, Texas

**FISCAL NOTE
75th Regular Session**

April 1, 1997

To: Honorable Ron Wilson, Chair
Committee on Licensing & Administrative
Procedures
House
Austin, Texas

IN RE: Senate Bill No. 229,
Committee Report 2nd House, as
amended

By: Carona

From: John Keel, Director

In response to your request for a Fiscal Note on SB229 (Relating to the regulation of air conditioning and refrigeration contractors; providing penalties.) this office has determined the following:

<p>Biennial Net Impact to General Revenue Funds by SB229-Committee Report 2nd House, as amended</p>
--

No fiscal implication to the State is anticipated.

No fiscal implication to units of local government is anticipated.

Source: Agencies:

LBB Staff: JK, TH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
75th Regular Session

February 4, 1997

To: Honorable Carlos F. Truan, Chair
Committee on International Relations, Trade,
& Technology
Senate
Austin, Texas

IN RE: Senate Bill No. 229
By: Carona

From: John Keel, Director

In response to your request for a Fiscal Note on SB229 (Relating to the regulation of air conditioning and refrigeration contractors; providing penalties.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by SB229-As Introduced

No fiscal implication to the State is anticipated.

This bill would amend the Air Conditioning and Refrigeration Contractor License Law to add duct cleaning to the definition and clarify "air conditioning and refrigeration" work; increase the availability of examination locations; authorize municipalities to issue citations for violations; make all contracts with unlicensed workers invalid; allow municipalities to collect fees for administering and issuing licenses; and requires inspectors of air conditioning and refrigeration systems to hold licenses.

This bill authorizes municipalities the ability to issue citations for violations of the Air Conditioning and Refrigeration Contractors Law and collect appropriate fees for administering examinations, licenses and notification requirements. Local governments may incur costs of contractor notification, issuing licenses, and enforcing the requirements of the Act. Licensure will require administering examinations and incurring related costs. In addition, municipal citation processing will also incur administrative costs.

Source: Agencies: 452 Department of Licensing and Regulation
329 Real Estate Commission

RECOMMITTED
HOUSE
COMMITTEE REPORT

1st Printing

By: Carona, Truan
(Kubiak)

S.B. No. 229

A BILL TO BE ENTITLED

AN ACT

1 relating to the regulation of air conditioning and refrigeration
2 contractors; providing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Subdivisions (7) and (9), Section 2, Air
5 Conditioning and Refrigeration Contractor License Law (Article
6 8861, Vernon's Texas Civil Statutes), are amended to read as
7 follows:

8 (7) "Air conditioning and refrigeration maintenance
9 work" means repair work and all other work required for the
10 continued normal performance of an environmental air conditioning
11 system, commercial refrigeration system or equipment, or process
12 cooling or heating system. The term does not include the
13 installation of a total replacement of the system or the
14 installation or repair of boilers or pressure vessels [~~that-must-be~~
15 ~~installed-by-licensed-persons-pursuant-to-rules-and-regulations~~
16 ~~adopted-by-the-commissioner~~] under Chapter 755, Health and Safety
17 Code.

18 (9) "Air conditioning and refrigeration contracting"
19 means the design, installation, construction, maintenance, service,
20 repair, alteration, or modification of a product or of equipment in
21 environmental air conditioning, commercial refrigeration, or
22 process cooling or heating systems. The term includes cleaning
23 equipment and duct materials as required for the proper operation

1 of such a system.

2 SECTION 2. Subsection (e), Section 3, Air Conditioning and
3 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
4 Civil Statutes), is amended to read as follows:

5 (e) The commissioner shall prescribe the method and content
6 of examinations administered under this Act and shall set
7 compliance requirements for the examinations. The examinations
8 ~~[shall--be-offered-only-in-Travis-County-and]~~ shall be offered on a
9 quarterly basis at locations designated by the commissioner.

10 SECTION 3. Section 3A, Air Conditioning and Refrigeration
11 Contractor License Law (Article 8861, Vernon's Texas Civil
12 Statutes), is amended by adding Subsection (i) to read as follows:

13 (i) Section 8, Article 6252-33, Revised Statutes, does not
14 apply to the advisory board.

15 SECTION 4. Section 3B, Air Conditioning and Refrigeration
16 Contractor License Law (Article 8861, Vernon's Texas Civil
17 Statutes), is amended to read as follows:

18 Sec. 3B. LICENSE REQUIRED; CITATION. (a) Unless the person
19 is exempted under Section 6 of this Act, a person may not perform
20 air conditioning and refrigeration contracting without a license
21 under this Act.

22 (b) A representative of the department or a municipal
23 official may issue a citation to a person who performs air
24 conditioning and refrigeration contracting without a license issued
25 under this Act. To the extent authorized by Chapter 29, Government

1 Code, the municipal court has concurrent jurisdiction with a
2 justice court of a precinct in which the municipality is located in
3 a case arising from a citation issued under this subsection.

4 SECTION 5. The Air Conditioning and Refrigeration Contractor
5 License Law (Article 8861, Vernon's Texas Civil Statutes) is
6 amended by adding Section 3C to read as follows:

7 Sec. 3C. ENFORCEMENT OF CONTRACTS. (a) A person who
8 performs air conditioning and refrigeration contracting without
9 holding the appropriate license under this Act may not collect a
10 fee or otherwise enforce a contract for the services performed. To
11 enforce a contract for the performance of air conditioning and
12 refrigeration contracting, the person who performs the services
13 must present proof that the person holds a license under this Act
14 at the time the contract is signed and the work performed.

15 (b) The commissioner shall adopt rules relating to the
16 manner in which proof may be presented under this section.

17 SECTION 6. Subsections (f) and (g), Section 4, Air
18 Conditioning and Refrigeration Contractor License Law (Article
19 8861, Vernon's Texas Civil Statutes), are amended to read as
20 follows:

21 (f) The application must be made on a form prescribed by the
22 commissioner and must specify the class of license and each
23 endorsement the applicant seeks. The application must be verified
24 and must be accompanied by:

25 (1) [evidence-of-the-insurance-coverage-required-under

1 ~~this-Act;~~

2 [~~12~~] a statement of the applicant's practical
3 experience; and

4 (2) [~~13~~] the examination fee.

5 (g) The commissioner shall issue an air conditioning and
6 refrigeration contractor license to an applicant who possesses the
7 required qualifications, passes the appropriate examinations,
8 furnishes evidence of the insurance coverage required under this
9 Act, and pays the [~~examination-fee-and-the~~] original license fee
10 required by this Act. An applicant who fails an examination is
11 eligible for reexamination.

12 SECTION 7. Subsection (a), Section 6, Air Conditioning and
13 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
14 Civil Statutes), is amended to read as follows:

15 (a) This Act does not apply to a person who:

16 (1) performs air conditioning and refrigeration
17 contracting in a building owned solely by him as his home;

18 (2) performs air conditioning or refrigeration
19 maintenance work if (i) the person is a maintenance man or
20 maintenance engineer who is a regular bona fide employee of the
21 property owner, the property lessee, or the management company
22 managing the property where the maintenance work is being
23 performed, (ii) the work is performed in connection with the
24 business in which the person is employed, and (iii) the person and
25 the person's employer referred to in (i) above do not engage in the

1 occupation of air conditioning and refrigeration contracting for
2 the general public;

3 (3) performs air conditioning and refrigeration
4 contracting and is regularly employed by a regulated electric or
5 gas utility;

6 (4) is licensed as a professional engineer under The
7 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil
8 Statutes), performs work in connection with the business in which
9 the person is employed, and does not engage in the practice of air
10 conditioning and refrigeration contracting for the general public;

11 (5) performs process cooling or heating work for an
12 industrial operation such as a chemical plant, petrochemical plant,
13 refinery, natural gas plant, or natural gas treating plant when
14 employed by that operation;

15 (6) performs air conditioning and refrigeration
16 contracting on:

17 (A) a portable or self-contained ductless air
18 conditioning or refrigeration product that has a cooling capacity
19 of three tons or less;

20 (B) a portable or self-contained heating product
21 that does not require the forced movement of air outside the
22 heating unit; or

23 (C) environmental air conditioning equipment
24 that is intended for temporary use and is not fixed in place; [or]

25 (7) performs air conditioning services only on a motor

1 vehicle air conditioning unit or who employs a person who performs
2 air conditioning services only on a motor vehicle air conditioning
3 unit; or

4 (8) performs air conditioning and refrigeration
5 maintenance work on evaporative coolers.

6 SECTION 8. Section 7, Air Conditioning and Refrigeration
7 Contractor License Law (Article 8861, Vernon's Texas Civil
8 Statutes), is amended to read as follows:

9 Sec. 7. REPORTING REQUIREMENT. (a) Each air conditioning
10 and refrigeration contractor [person] licensed under this Act shall
11 notify the municipal authority who has control of the enforcement
12 of regulations relative to air conditioning and refrigeration
13 contracting in the municipality in which the person is engaged in
14 air conditioning and refrigeration contracting that the person has
15 obtained a state license.

16 (b) The notification must be in the form required by the
17 municipality.

18 (c) The amount of a fee imposed by a municipality on a
19 contractor to provide notice under this section may be set by the
20 municipality only in the amount reasonable and necessary to
21 implement this section.

22 SECTION 9. Section 8, Air Conditioning and Refrigeration
23 Contractor License Law (Article 8861, Vernon's Texas Civil
24 Statutes), is amended to read as follows:

25 Sec. 8. PENALTY. Except as provided in Section 9, a person

1 commits an offense if the person knowingly or intentionally engages
2 in air conditioning and refrigeration contracting without a license
3 issued under this Act. An offense under this section is a Class A
4 [B] misdemeanor.

5 SECTION 10. Section 9, Air Conditioning and Refrigeration
6 Contractor License Law (Article 8861, Vernon's Texas Civil
7 Statutes), is amended to read as follows:

8 Sec. 9. MUNICIPAL REGULATION. (a) A license issued by a
9 municipality of this state that complies with the requirements of
10 this section is valid under the terms of the license within that
11 municipality. However, a license issued under this Act is valid
12 throughout the state, and the holder and people under supervision
13 are not required to hold a municipal license to practice air
14 conditioning and refrigeration contracting in any municipality
15 within this state.

16 (b) An applicant for a municipal license must:

17 (1) pass an examination that covers the same subjects
18 as the examination required by the commissioner for an air
19 conditioning and refrigeration contractor license of the class of
20 work that the municipal applicant proposes to perform; and

21 (2) meet experience requirements that are at least as
22 strict as those required under Section 4(e) of this Act for an air
23 conditioning and refrigeration contractor license.

24 (c) A municipality may by ordinance adopt and enforce
25 standards for air conditioning and refrigeration contractors that

are consistent with the standards established under this Act. The municipality shall report violations of the ordinance to the commissioner not later than the 10th day after the date on which the municipality takes action to enforce the ordinance. Conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license issued under this Act.

SECTION 11. Subsection (c), Section 23, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), is amended by adding Subdivision (4) to read as follows:

(4) In addition to the license requirements imposed under Subdivisions (1), (2), and (3) of this subsection, a business entity that inspects an environmental air conditioning system, commercial refrigeration system, or process cooling or heating system as part of a real estate inspection conducted under this Act must employ a person who holds the appropriate air conditioning and refrigeration contractor licenses and endorsements under the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes). An employee who does not hold a license or endorsement under the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) may perform the inspection under the direction of the license holder. For purposes of this Act, "inspection" of environmental air conditioning, commercial refrigeration, and process cooling and heating equipment means an inspection that

1 includes the use of electronic instruments, gauges, thermometers,
2 mechanical instruments, or other meters that require direct in-line
3 connection to the refrigeration system.

4 SECTION 12. Section 25, Residential Service Company Act
5 (Article 6573b, Revised Statutes), is amended to read as follows:

6 Sec. 25. EXEMPTIONS. The provisions of this Act shall not
7 apply to any of the following persons and transactions, and each
8 and all of the following persons and transactions are hereby
9 exempted from the provisions of this Act, to wit:

10 (a) performance guarantees given by either the builder
11 of a home or the manufacturer or seller of an appliance or other
12 system or component;

13 (b) any residential service contract executed on or
14 before the effective date of this Act;

15 (c) any service contract, guarantee, or warranty
16 intending to guarantee or warrant the repairs or service of a home
17 appliance, system, or component, provided such service contract,
18 guarantee, or warranty is issued by a person who has sold,
19 serviced, repaired, or provided replacement of such appliance,
20 system, or component at the time of, or prior to the issuance of
21 such contract, guarantee, or warranty; and provided further that
22 the person issuing the service contract, guarantee, or warranty
23 does not engage in the business of a service company;

24 (d) any person engaging in the business of structural
25 pest control in compliance with the Texas Structural Pest Control

1 Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes,
2 1925);

3 (e) any person who performs air conditioning and
4 refrigeration contracting in compliance with the Air Conditioning
5 and Refrigeration Contractor License Law (Article 8861, Vernon's
6 Texas Civil Statutes); and

7 (f) any service or maintenance contract or agreement,
8 or warranty, which provides for, warrants, or guarantees, the
9 maintenance, repair, service, replacement, or operation or
10 performance, of any product or part thereof, including but not
11 limited to a structural component, the appliances, or the
12 electrical, plumbing, heating, cooling or air-conditioning systems
13 in or of a building or residence, provided such service or
14 maintenance contract or agreement, or warranty is sold, offered for
15 sale, or issued by the manufacturer or merchant who manufactured or
16 sold such product or part thereof.

17 SECTION 13. (a) The change in law made to Section 8, Air
18 Conditioning and Refrigeration Contractor License Law (Article
19 8861, Vernon's Texas Civil Statutes), by this Act applies only to
20 an offense committed on or after the effective date of this Act.
21 For purposes of this section, an offense is committed before the
22 effective date of this Act if any element of the offense occurs
23 before that date.

24 (b) An offense committed before the effective date of this
25 Act is governed by the law in effect when the offense was

1 committed, and the former law is continued in effect for that
2 purpose.

3 SECTION 14. (a) Except as provided by Subsection (b) of
4 this section, the change in law made to Section 9, Air Conditioning
5 and Refrigeration Contractor License Law (Article 8861, Vernon's
6 Texas Civil Statutes), by this Act applies to a municipal license
7 that is issued or renewed on or after the effective date of this
8 Act. A municipality subject to that section shall adopt
9 examination requirements in compliance with that section not later
10 than January 1, 1998.

11 (b) To continue to engage in the practice of air
12 conditioning and refrigeration contracting after September 1, 1997,
13 a person who holds a municipal license on the effective date of
14 this Act must satisfy the examination requirements imposed under
15 Subsection (b), Section 9, Air Conditioning and Refrigeration
16 Contractor License Law (Article 8861, Vernon's Texas Civil
17 Statutes), as amended by this Act, not later than June 1, 1998.

18 SECTION 15. (a) This Act takes effect September 1, 1997.

19 (b) Not later than December 31, 1997, the commissioner of
20 licensing and regulation shall adopt rules as required by Section
21 3C, Air Conditioning and Refrigeration Contractor License Law
22 (Article 8861, Vernon's Texas Civil Statutes), as added by this
23 Act.

24 (c) Subsection (c), Section 23, The Real Estate License Act
25 (Article 6573a, Vernon's Texas Civil Statutes), as amended by this

1 Act, applies only to a real estate inspection that is conducted on
2 or after the effective date of this Act. A real estate inspection
3 conducted before that date is governed by the law in effect on the
4 date that the inspection occurs, and the former law is continued in
5 effect for that purpose.

6 (d) Section 25, Residential Service Company Act (Article
7 6573b, Revised Statutes), as amended by this Act, applies only to a
8 residential service contract that is entered into on or after the
9 effective date of this Act. A residential service contract that is
10 entered into before that date is governed by the law in effect on
11 the date that the contract is entered into, and the former law is
12 continued in effect for that purpose.

13 SECTION 16. The importance of this legislation and the
14 crowded condition of the calendars in both houses create an
15 emergency and an imperative public necessity that the
16 constitutional rule requiring bills to be read on three several
17 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE AMENDMENT NO. 1

Amend SB 229 in Section 7 of the bill as follows:

Page 6, line 5, after "on" add "residential"; and after "evaporative coolers" add "up to and including 6,500 cubic feet per minute (cfm)."

Pickett

COMMITTEE AMENDMENT NO. 2

Amend SB 229 by adding the following:

In SECTION 1 of the bill, pg. 1, line 9 add the following:

(6) "Person" means an individual, a firm, partnership, corporation, association or other organization, or any combination of any thereof.

In SECTION 1 of the bill, insert a new Subsection 14 and 15 as follows:

(14) "Air conditioning and refrigeration contracting company" means any person, corporation, partnership, association, or other entity that performs air conditioning and refrigeration contracting.

(15) "Direct Personal Supervision" means directing and verifying work requiring a license under the Act by means of hiring, training, and consulting with employees, personally observing and checking work of employees, and having responsibility for handling customer complaints.

Pickett

COMMITTEE AMENDMENT NO. 3

In SECTION 4 of the bill, Amend Sec. 3B by adding the following:

(a) Unless the person is exempted under Section 6 of this Act, a person may not perform air conditioning and refrigeration contracting without a license under this Act. A person is not required to be individually licensed under the Act if the person is a bona fide employee of a company which has a license holder who has direct personal supervision over him or her.

(b) An air conditioning and refrigeration contracting company that is not exempt under the Act must employ a license holder(s) in each permanent office whose license is assigned to that company.

In SECTION 7 of the bill, Amend as follows:

(g) A person who assists in the performance of air conditioning and refrigeration contracting work under the supervision of a licensee as a bona fide employee is not required to be licensed.

Pickett

COMMITTEE AMENDMENT NO. 4

Amend S.B. 229 as follows:

Amendment to Committee Amendment #3 to read as follows:

(b) An air conditioning and refrigeration contracting company that is not exempt under the Act must employ a license holder(s) ~~[in--each-permanent-office]~~ whose license is assigned to

1 that company.

3 COMMITTEE AMENDMENT NO. 5

5 Pg. 1, line 22, delete [~~"The term includes cleaning equipment~~
6 ~~and duct materials as required for the proper operation of--such--a~~
7 ~~system."~~]

8

COMMITTEE REPORT

The Honorable James E. "Pete" Laney
Speaker of the House of Representatives

5/20/97
(date)

Sir:

We, your COMMITTEE ON LICENSING AND ADMINISTRATIVE PROCEDURES

to whom was referred SB 229 have had the same under consideration and beg to report back with the recommendation that it

- ☐ do pass, without amendment.
- ☒ do pass, with amendment(s).
- ☐ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- ☒ yes ☐ no A fiscal note was requested.
- ☐ yes ☒ no A criminal justice policy impact statement was requested.
- ☐ yes ☒ no An equalized educational funding impact statement was requested.
- ☐ yes ☒ no An actuarial analysis was requested.
- ☐ yes ☒ no A water development policy impact statement was requested.
- ☐ yes ☒ no A tax equity note was requested.
- ☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor KUBIAK

Joint Sponsors: / / /

Co-Sponsors:

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Wilson, Chair	X			
Kubiak, Vice-chair	X			
Goolsby	X			
Haggerty	X			
Hamric	X			
Jones, D.	X			
Pickett	X			
Torres	X			
Yarbrough	X			

Total 9 aye
0 nay
0 present, not voting
0 absent

Ron Wilson
CHAIR

BILL ANALYSIS

LICENSING & ADMINISTRATIVE PROCEDURES

S.B. 229

By: Carona (Kubiak)

5-20-97

Committee Report (Amended)

BACKGROUND

The Air Conditioning and Refrigeration Contractor License Law (Article 8861, V.T.C.S.) requires those persons engaging in environmental air conditioning, commercial refrigeration, or process heating or cooling to be examined and licensed by the State of Texas. S.B. 229 sets forth regulations and penalties pertaining to air conditioning and refrigeration contracting that are related to the need for establishing certain license practices and enforcing contracts.

PURPOSE

S.B. 229 sets forth regulations and penalties pertaining to air conditioning and refrigeration contracting.

RULEMAKING AUTHORITY

Rulemaking authority is granted under SECTION 5, The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 2(7) and (9), Article 8861, V.T.C.S. (Air Conditioning and Refrigeration Contractor License Law) to redefine "air conditioning and refrigeration maintenance word" and "air conditioning and refrigeration contracting."

SECTION 2. Amends Section 3(e), Article 8861, V.T.C.S., to requires the examinations to be offered on a quarterly basis at locations designated by the Texas Commissioner of Licensing and Regulation (commissioner),

SECTION 3. Amends Section 3A, Article 8861, V.T.C.S., by adding Subsection (i), to provide that Section 8, Article 6252-33, V.T.C.S., does not apply to the Air Conditioning and Refrigeration Contractors Advisory Board (advisory board).

SECTION 4. Amends Section 3B, Article 8861, V.T.C.S., as follows:

Sec. 3B. New heading: LICENSE REQUIRED; CITATION. Authorizes a representative of the Department of Licensing and Regulation (department) or a municipal official to issue a citation to a person who performs air conditioning and refrigeration contracting without a license issued under this Act. Provides that the municipal court has concurrent jurisdiction with a justice court of a precinct in which the municipality is located in a case arising from a citation issued under this subsection to the extent authorized by Chapter 29, Government Code. Makes a conforming change.

SECTION 5. Amends Article 8861, V.T.C.S., by adding Section 3C, as follows:

Sec. 3C. ENFORCEMENT OF CONTRACTS. Prohibits a person who performs air conditioning and refrigeration contracting without holding the appropriate license from collecting a fee or otherwise enforcing a contract for the services performed. Requires a person to present proof that the person holds license at the time the contract is signed and

the work performed in order to enforce a contract. Requires the commissioner to adopt rules relating to the manner in which proof may be presented under this section.

SECTION 6. Amends Section 4(f) and (g), Article 8861, V.T.C.S., to delete text requiring an application to be accompanied by evidence of the insurance coverage required under this Act. Requires the commissioner to issue an air conditioning and refrigeration contractor license to a person who furnishes evidence of the insurance coverage and performs certain activities required under this Act. Makes conforming and nonsubstantive changes.

SECTION 7. REPORTING REQUIREMENT. Amends Section 7, Article 8861, V.T.C.S., to require each air conditioning and refrigeration contractor, rather than that person, to notify the corresponding municipal authority that the person has obtained a state license. Authorizes the amount of a fee imposed on a contractor to be set by the municipality only in the amount reasonable and necessary to implement this section. Makes conforming changes.

SECTION 8. Amends Section 8, Article 8861, V.T.C.S., to provide that a person commits a Class A, rather than Class B, misdemeanor if the person knowingly and intentionally engages in air conditioning and refrigeration contracting without a license.

SECTION 9. Amends Section 9, Article 8861, V.T.C.S., to provide that a license issued by a municipality of this state that complies with the requirements of this section is valid under the terms of the license within that municipality. Requires an applicant for a municipal license to pass an examination and meet specific experience requirements. Makes a conforming change.

SECTION 10. Amends Section 23(c), Article 6573a, V.T.C.S., (The Real Estate License Act) by adding Subdivision (4), to require a business entity that inspects certain systems as part of a real estate inspection to employ a person who holds the appropriate air conditioning and refrigeration contractor licenses and endorsements under Article 8861, V.T.C.S. Authorizes an employee who does not hold a license or endorsement to perform the inspection under the direction of the license holder. Defines "inspection."

SECTION 11. Amends Section 25, Article 6573b, V.T.C.S., (Residential Service Company Act) to provide that any person who performs air conditioning refrigeration in compliance with the Air Conditioning and Refrigeration Contractor License Law, Article 8861, V.T.C.S., is exempt from the provisions of this Act. Makes a conforming change.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Provides that the change in law made to SECTION 9, Article 8861, V.T.C.S., except as provided by Subsection (b), prospective. Requires a municipality to adopt examination requirements in compliance with this section not later than January 1, 1998. Requires a person who holds a municipal license to satisfy the examination requirements imposed under Section 9(b), Article 8861, V.T.C.S., not later than June 1, 1998.

SECTION 14. (a) Effective date: September 1, 1997.

(b) Requires the commissioner of licensing and regulation to adopt rules as required by Section 3C, Article 8861, V.T.C.S., not later than December 31, 1997.

(c) and (d) Make application of this Act prospective.

SECTION 15. Emergency clause.

EXPLANATION OF AMENDMENTS

Committee Amendment #1 amends Section 7 on page 6, line 5, after "on" add "residential"; after "evaporate coolers" add "up to and including 6,500 cubic feet per minute (cfm)"

Committee Amendment #2 amends SECTION 1, pg.1, line 9, (6) "Person" means an individual,

a firm, partnership, corporation, association or other organization, or any combination of any thereof.

In SECTION 1 of the bill, insert an new Subsection 14 and 15 as follows:

(14) "Air conditioning and refrigeration contracting company" means any person, corporation, partnership, association, or other entity that performs air conditioning and refrigeration contracting.

(15) "Direct Personal Supervision" means directing and verifying work requiring a license under the Act by means of hiring, training, and consulting with employees, personally observing and checking work of employees, and having responsibility for handling customer complaints.

Committee Amendment #3 amends SECTION 4, by amending Sec 3B as follows:

(a) Unless the person is exempted under Section 6 of this Act, a person may not perform air conditioning and refrigeration contracting without a license under this Act. A person is not required to be individually licensed under the Act if the person is a bona fide employee of a company which has a license holder who has direct personal supervision over him or her.

(b) An air conditioning and refrigeration contracting company that is not exempt under the Act must employ a license holder(s) in each permanent office whose license is assigned to that company.

In SECTION 7, Amend as follows:

(g) A person who assists in the performance of air conditioning and refrigeration contracting work under the supervision of a licensee as a bona fide employee is not required to be licensed.

Committee Amendment #4 amends Committee Amendment #3 as follows:

(b) An air conditioning and refrigeration contracting company that is not exempt under the Act must employ a license holder(s) in each permanent office whose license is assigned to that company.

Committee Amendment #5 amends Page 1, line 22 as follows: ~~"The term includes cleaning equipment and duct materials as required for the proper operation of such a system."~~

SUMMARY OF COMMITTEE ACTION

SB 229

May 20, 1997 8:48PM
Considered in formal meeting
Amendment(s) considered in committee
Reported favorably as amended

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

75th Regular Session

April 1, 1997

To: Honorable Ron Wilson, Chair
Committee on Licensing & Administrative
Procedures
House
Austin, Texas

IN RE: Senate Bill No. 229,
Committee Report 2nd House, as
amended

By: Carona

From: John Keel, Director

In response to your request for a Fiscal Note on SB229 (Relating to the regulation of air conditioning and refrigeration contractors; providing penalties.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by SB229-Committee Report 2nd House, as amended

No fiscal implication to the State is anticipated.

No fiscal implication to units of local government is anticipated.

Source: Agencies:

LBB Staff: JK, TH

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

75th Regular Session

March 6, 1997

To: Honorable Ron Wilson, Chair
Committee on Licensing & Administrative
Procedures
House
Austin, Texas

IN RE: Senate Bill No. 229, As

Engrossed

By: Carona

From: John Keel, Director

In response to your request for a Fiscal Note on SB229 (Relating to the regulation of air conditioning and refrigeration contractors; providing penalties.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by SB229-As <u>Engrossed</u>
--

No fiscal implication to the State is anticipated.

The engrossed version amendments to this bill add licensing exemption criteria for people working with air conditioning and refrigeration systems.

No fiscal implication to units of local government is anticipated.

Source: Agencies:

LBB Staff: JK, TH, RA

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE
75th Regular Session

February 4, 1997

To: Honorable Carlos F. Truan, Chair
Committee on International Relations, Trade,
& Technology
Senate
Austin, Texas

IN RE: Senate Bill No. 229
By: Carona

From: John Keel, Director

In response to your request for a Fiscal Note on SB229 (Relating to the regulation of air conditioning and refrigeration contractors; providing penalties.) this office has determined the following:

Biennial Net Impact to General Revenue Funds by SB229-As Introduced

No fiscal implication to the State is anticipated.

This bill would amend the Air Conditioning and Refrigeration Contractor License Law to add duct cleaning to the definition and clarify "air conditioning and refrigeration" work; increase the availability of examination locations; authorize municipalities to issue citations for violations; make all contracts with unlicensed workers invalid; allow municipalities to collect fees for administering and issuing licenses; and requires inspectors of air conditioning and refrigeration systems to hold licenses.

This bill authorizes municipalities the ability to issue citations for violations of the Air Conditioning and Refrigeration Contractors Law and collect appropriate fees for administering examinations, licenses and notification requirements. Local governments may incur costs of contractor notification, issuing licenses, and enforcing the requirements of the Act. Licensure will require administering examinations and incurring related costs. In addition, municipal citation processing will also incur administrative costs.

Source: Agencies: 452 Department of Licensing and Regulation
329 Real Estate Commission

S.B. No. 229

By CARONA-Trian

A BILL TO BE ENTITLED

AN ACT:

relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

JAN 16 1997 Filed with the Secretary of the Senate
JAN 21 1997 Read and referred to Committee on INTERNATIONAL RELATIONS,
TRADE & TECHNOLOGY
FEB 06 1997 Reported favorably _____
Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.
Ordered not printed
Laid before the Senate
FEB 13 1997 Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent
31 yeas, 0 nays
FEB 13 1997 Read second time, amended, and ordered engrossed by: { unanimous consent
a viva voce vote
____ yeas, ____ nays
FEB 13 1997 Senate and Constitutional 3 Day Rule suspended by a vote of 31 yeas, 0 nays.
FEB 13 1997 Read third time, _____, and passed by: { A viva voce vote
____ yeas, ____ nays

Betty King
SECRETARY OF THE SENATE

OTHER ACTION:

FEB 13 1997 Engrossed

February 17, 1997 Sent to House

Engrossing Clerk

Patsy Spaw

MAY 20 1997 Point of Order Sustained
Returned to Committee

MAY 20 1997 Reported favorably as amended

MAY 20 1997 Send to Committee on Calendars

FEB 17 1997 Received from the Senate
FEB 18 1997 Read first time and referred to Committee on Licensing & Administrative Procedures
MAR 17 1997 Reported ____ favorably (as amended) (~~unanimous consent~~)
APR 4 1997 Sent to Committee on (Calendars) (~~Unanimous Consent Calendars~~)
MAY 20 1997 Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of ____ yeas, ____ nays, ____ present, not voting)
Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of ____ yeas, ____ nays, ____ present, not voting.
Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of ____ yeas, ____ nays, ____ present, not voting)
Returned to Senate.
Returned from House without amendment.
Returned from House with ____ amendments.
Concurred in House amendments by a viva voce vote ____ yeas, ____ nays.

CHIEF CLERK OF THE HOUSE

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

97 APR -3 PM 3:24
HOUSE OF REPRESENTATIVES

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